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VOLUME III

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SIR T. CATO WORSFOLD, Bt.
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CONVEYANCING PRACTICE

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THE NEW ERA PUBLISHING CO. LTD.
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CONVEYANCING PRACTICE

BY

JOHN J. WONTNER

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"SPECIFIC PERFORMANCE PRACTICE," "A GUIDE TO LAND REGISTRY PRACTICE," ETC.

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PREFACE

THERE are many works on Conveyancing. Some are by eminent members of the Bar and are erudite. Some are by practising solicitors and are practical. Then there are books of precedents—invaluable works—and containing innumerable explanatory notes.

It may truthfully be said that there have been more works on conveyancing issued within the last few years than on any other legal subject. The new property statutes of 1925 with their important changes in the law of real and leasehold property caused a huge demand for explanatory works. But with them all there is still room for another volume on the same subject. The other works presuppose an extensive knowledge of conveyancing. This volume is for the young practitioner or the clerk, who comes into an office with little knowledge of real property law and practice, and, dipping his head into one of the conveyancing treatises on the bookshelves he is bewildered by its language.

This work is couched in simple language—explaining all that might prove a stumbling-block, avoiding copious references to Acts of Parliament and decided cases, but enabling the reader to commence his acquaintance with conveyancing work without that spirit of hopelessness which overcomes us on trying to commence learning algebra at Chapter XXX or to study Greek by perusing a Greek Testament.

The author is already the writer of one or two legal works framed in simple language, and has in this volume endeavoured to carry on his work of making law and practice simple and easy to understand.

JOHN J. WONTNER.

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CONVEYANCING PRACTICE

CHAPTER I

THE PRACTICE OF CONVEYANCING

"CONVEYANCING," according to a well-known dictionary, is "the art or practice of drawing deeds, leases, or other writings for transferring the title to property from one person to another."

In actual practice, that part of a Solicitor's work which is called "conveyancing" deals with the sale and purchase (and mortgage) of property, the granting of leases and the making of wills (with other minor matters like Powers of Attorney, Bills of Sale, etc.). It is not confined to the actual *drawing* (or preparing) of the deeds (as the dictionary definition would seem to indicate), but includes all matters incidental to the transfer of the property, such as investigating the vendor's title, searching for any incumbrances affecting both the property and the vendor's title and generally seeing the transaction through all its stages to completion.

The greater part of conveyancing work relates to the sale and purchase of freehold and leasehold houses and land. Such work forms, in most cases, a considerable and lucrative part of a Solicitor's practice, and a knowledge of conveyancing is essential to all Solicitors' clerks, even to those who propose to specialize in other branches of the law, and legal practice, such as litigation.

The steps in an ordinary sale or purchase of property are briefly as follows.

1. The preparation, signing, and exchanging of the contract for sale.

2. The "deducing" or preparation by the Vendor's Solicitor of the abstract of the Vendor's title.

3. The investigation (i.e. examination) of the Vendor's title by the Purchaser's Solicitor.

4. The Requisitions on Title (or questions asked by the Purchaser's Solicitor on the Vendor's Title) and the Answers given by the Vendor's Solicitor.

5. The searches for incumbrances registered against the Vendor or the property.

6. The drawing of the Conveyance or Assignment by the Purchaser's Solicitor and its approval by the Vendor's Solicitor.

7. The engrossing of the Conveyance and its execution.

8. The calculation of the apportionment of rates, taxes, insurance, etc.

9. The "completion," i.e. the attendance at the Vendor's Solicitor's office to pay the purchase money (or balance) and taking up the deeds.

10. The stamping of the Conveyance with *ad valorem* stamp duty, and registration of the deed (if necessary), and the preparation of the form of Particulars required by the Finance Act, 1931.

All these matters are dealt with in detail in this volume, and they will be met with in some form or another, or at some stage, by every Solicitor's clerk.

Conveyancing is to-day a simple matter compared with the cumbersome practice of a century ago. In those times deeds contained long and wearying recitals of former deeds, and various covenants and declarations designed to cover every conceivable loophole. From time to time

various Acts of Parliament were passed to try and simplify titles to property and shorten conveyances by omitting those clauses which were common to and appeared in all conveyances. In 1845 an Act was passed to render superfluous the insertion of "general words" and to provide very short forms of covenants and operative words in a conveyance. The Act was entirely ignored by Solicitors, who continued to carry on in the old sweet way. As a Solicitor's charges were in those days based on the length of the deed, instead of on a scale fee dependent on the consideration, it is not to be wondered at that Solicitors ignored what they looked upon as an attempt to cut down their costs.

Ultimately by the Conveyancing and Law of Property Act, 1881, substantial progress was made in the direction of simplification. Covenants for title in conveyances, mortgages, etc., were cut down to a few words; "general words" were omitted altogether except in special cases, and their effect "implied" by law, and many other covenants and declarations dealt with by references to the appropriate section of the Act, or were omitted altogether as being implied. For several years this simplified conveyancing proved satisfactory, and it might have continued to this day had not a rival system of transferring land and houses intervened. This was the system now known as Land Registration.

Ordinary conveyancing was always admittedly imperfect. There was no method of proving without doubt that the vendor was the true owner of the property. The best proof possible was that he was in possession of the property (an old

proverb says that "possession is nine-tenths of the law "), and that he held the title deeds.

There was, however, no proof that he had not unlawfully broken into the property or stolen the title deeds, or (even if he himself was quite honest and *bona fide*) that some predecessor in title had not done one of these things; and that the rightful owner might not come along and claim the property.

As far back as the reign of Henry the Eighth, and even earlier, this difficulty was felt, and some form or other of registration of title deeds was provided by statute, practically the whole of which proved ineffective as it was not compulsory.

In 1708 an Act was passed at the express request of "the gentlemen and freeholders of the county of Middlesex," establishing a deeds registry for the county of Middlesex (Middlesex Registry Act, 1708, 7 Anne, c. 20). This registry—the Middlesex Deeds Registry—still exists, and all title deeds conveying property situate in the county of Middlesex have to be registered there. The activity of the Registry is, however, for reasons explained later, now confined to that part of the county of Middlesex which is outside the county of London. About the same period as the establishment of this Registry, similar registries were established for the three Ridings (West, East, and North) of the county of York.

The Middlesex Registry has (in recent times) failed to confer any substantial benefit upon the public. In 1870 a Royal Commission unanimously reported that it caused "an increase of trouble and expense," and afforded no "security or other special advantage," and recommended its abolition "from as early a date as possible." This

recommendation has been repeated by the Lord Chancellors' Land Transfer Committee in January, 1935.

About 60 or 70 years ago leading members of the legal profession began to consider the possibility of establishing a fresh system of registration of titles to land analogous to the registration of ships or stocks and shares of a company. The basis of this new system was the registration of the owner's name with a description of his land and a title number by which the land was identified on a special large scale map or plan. In 1862 the first English Registration Act (Lord Westbury's—25 and 26 Vic. c. 53) was passed.[1] It was non-compulsory, and failed. Sixteen years later a fresh attempt was made by the Land Transfer Act, 1875 (38 and 39 Vic. c. 87), but in the course of ten years' working only 113 titles were registered.

In 1897 yet another, but more successful attempt to carry out the scheme of land registration was launched. The Land Transfer Act, 1897, altered and amended the Act of 1875 and incidentally gave power compulsorily to enforce registration in any county or part of a county to be subsequently specified by Order or Orders of the Privy Council. Such compulsory powers were soon after acquired in respect of the City and County of London. The system met with growing success and, with various improvements, continued until 1925, when in common with the conveyancing law relating to unregistered land (Law of Property Act, 1925), it was found desirable to bring out a new Act

[1] This Act is entitled "An Act to facilitate the Proof of Titles and the Conveyance of Real Estate," and as Lord Westbury secured its passing, it became known as Lord Westbury's Act.

(Land Registration Act, 1925). To-day compulsory land registration functions in the County of London, Eastbourne, and Hastings, and voluntary registration elsewhere in England and Wales.

As a result of comparisons and discussions as to the rival advantages of land registration against ordinary conveyancing and an agitation extending over many years for a simplified form of ordinary conveyancing, the latter system was still further simplified by the Law of Property Act, 1925, and a trial period of ten years (1926–1935) given to see whether ordinary conveyancing in its new simplified form is as satisfactory as registration of land. We are in this trial period to-day.

There are many who regard land registration as unnecessary and conferring no advantages which could not be equally obtained through the present simplified system of ordinary conveyancing. There are many others who declare that ordinary conveyancing, even in its present simplified form, is defective, and that the only future for conveyancing lies in the extension of compulsory registration throughout England and Wales. The battle royal for the rival systems is likely to wax hot, with what result it is difficult to forecast (although the probabilities are that land registration will win).

The Solicitor's clerk, while therefore studying conveyancing in all its ramifications, should try to make himself well acquainted with land registration, as even if it does not in the near future entirely supersede ordinary conveyancing, the system will undoubtedly extend and increase.

CHAPTER II

THE CONTRACT FOR SALE

ALL conveyances and assignments of land or houses are the result of contracts or agreements for sale. This is obvious. Contracts are sometimes "oral" (i.e. by word of mouth) and sometimes written, or partly oral and partly written. When a client calls to instruct his solicitor to act for him in the purchase or sale of his house, the first thing to be done is to see that a binding contract exists which could, if necessary, be enforced by legal proceedings. If not, a formal contract should be prepared for signature by the vendor and purchaser.

If the agreement between the vendor and purchaser is merely "oral," it cannot be enforced, and the solicitor should take immediate steps to have a formal contract prepared and signed. Sect. 40 of the Law of Property Act, 1925, provides that no action may be brought on any contract for the sale or other disposition of land unless the agreement upon which the action is brought or some memorandum or part thereof is in writing and signed by the person to be charged or by some person lawfully authorised by him.

Even if the agreement to sell is in writing (i.e. in letters passing between the vendor and purchaser), it does not necessarily follow that it is a binding contract. To make it a binding contract, the document or documents must contain the following particulars and be signed as mentioned below—

1. The names of the vendor and purchaser.

2. A description of the land or house or houses sufficient to enable the same to be identified.

3. The amount of the purchase money.

4. Any other special or material terms of the purchase (other than the ordinary legal terms which are implied by law).

5. The document or documents must be signed by the person to be charged or his authorised agent.

If all the above essentials are found in the letters, etc., passing between the parties, it is not necessary to prepare a fresh formal contract unless the words "subject to formal contract" appear in the letters, although in a good many instances it is desirable to have a proper formal contract, as by such formal contract other important matters may be provided for—as for example the date on which the matter is to be finally completed and the purchase money paid. The absence of this provision as to the date of completion is of importance, as through its omission either party may delay completion indefinitely without any redress by the other party. This defect can, it is true, be subsequently cured by the innocent party giving notice to the defaulting party to complete on a fixed reasonable date,[1] but it is far better to have the matter formally fixed from the very start.

Where the words "subject to formal contract" or "subject to contract" appear anywhere in the letters exchanged between the parties, it is necessary to have a proper form of contract prepared, even though the essentials of a contract are to be found in the letters. This is because the contract

[1] *Stickney* v. *Keeble*, [1915] A.C. 386.

contained in the letters is expressly subject to the bargain being set out in formal terms.

If the correspondence between the parties does not contain the words "subject to contract" or "subject to formal contract" and the correspondence itself *does* constitute a binding contract the Statutory Conditions of Sale will apply. These Conditions have been published by the Lord Chancellor in exercise of the power conferred on him by Sect. 46 of the Law of Property Act, 1925. It must be distinctly understood that these Conditions apply only to contracts made by correspondence and then only subject to any modification or stipulation expressed between the parties in the correspondence itself. The Conditions can, however, as we shall see later, be made applicable to any contract of sale by reference, though this procedure is not usual. Contracts by correspondence occur quite frequently, especially in connection with small properties, and the full text of the Statutory Conditions is given in the Appendix for convenience of reference.

The simplest possible form of contract for sale is one in which the property is expressed to be sold subject to the conditions of sale contained in some standard published form, such as the National Conditions of Sale (Solicitors' Law Stationery Society, Ltd.), the Golden Rule Conditions of Sale (Sweet & Maxwell, Ltd.), or the Statutory Form of Conditions of Sale, 1925.

By this the wording of the contract itself can be cut very short, being limited to the names and addresses of the parties, a description of the property to be sold, the amount of the purchase money, the date fixed for completion, and short particulars

of the deed with which the title of the vendor is to commence. This deed must go back at least thirty years from the date of the contract, as (unless the purchaser agrees to accept a shorter title) the period of thirty years is prescribed by law as the period of title which a purchaser of land may require.[1] This subject is dealt with at greater length in Chapter III. All other matters in any way likely to arise under the contract will appear in the Conditions of Sale (whether National, Golden Rule, or Statutory), as these have all been carefully prepared by eminent conveyancing lawyers to meet every conceivable eventuality. Such matters as the time for delivery of the abstract of title, and of the requisitions on title, the interest to be paid on the balance of purchase money if completion is delayed, the identity of the property, the apportionment of outgoings up to the date of completion and so on are all provided for in the printed Conditions of Sale. It is a good plan to use habitually the same form of Conditions of Sale, as one thus becomes familiar with its terms and can remember its more usual clauses without constant reference to the printed conditions.

Where it is preferred to have all the conditions inserted in the agreement itself, instead of by reference to a standard form, it is as well to use one of the printed forms of Agreement for Sale published by some of the well-known law stationers. If not, the solicitor's clerk in preparing the agreement should see that the undermentioned matters are fully dealt with, viz—

1. The times for delivery of abstract, and of requisitions and answers (which times it is just as

[1] Law of Property Act, 1925, sect 44 (1).

well to state in the contract, are to be considered as "of the essence of the contract").

2. That the abstract of title shall be deemed to be perfect if it supplies the information suggested by any requisition.

3. That if the purchaser shall insist on any requisition or objection which the vendor is unable or unwilling to remove or comply with, the vendor shall be at liberty to rescind the contract and return the purchaser his deposit.

4. That the property shall be considered to be correctly described and its identity admitted by the purchaser on comparing the description in the title-deeds with the description given in the contract.

5. That the purchaser shall be deemed to purchase the property with full notice of the actual state of repair and take the property as it is.

6. That the property is sold subject to all rights of way and other rights or easements.

7. That the vendor will hold the fire insurance policy for the benefit of the purchaser.

8. As to the time, place and mode of completion.

9. As to the apportionment of the outgoings (i.e. rates, etc.) on the completion.

10. As to the purchaser paying interest on the balance of purchase money if completion is delayed beyond the date fixed for completion.

11. What is to happen if the purchaser fails to complete his purchase (i.e. the forfeiture of deposit to the vendor and the vendor's right to resell, and to claim damages for any loss through the property being subsequently sold at a loss).

It will be seen from the above that most of the conditions are in the vendor's favour—for much

the same reason as the covenants and conditions in a lease are in favour of the lessor.

The would-be vendor or purchaser having instructed you to act for him and having brought you his correspondence with the other party to the transaction, you will first ask him for the name and address of the other party's solicitors and will next consider whether a formal contract is necessary, or whether the letters exchanged between the buyer and seller form a binding contract. If such letters are sufficient to establish a contract, you should at once see that they are taken to the Inland Revenue Office at Somerset House, London, or wherever else it is your principal's practice to have documents stamped, and a sixpenny stamp impressed (stamp duty on agreements under hand only—i.e. not under seal). This stamp duty must be paid within fourteen days of the signing of the letter which "clinched" the contract (i.e. the letter of acceptance). If it is not stamped within this period, a penalty for being out of time will be imposed when the document is presented. If the client fails to hand you the letters until after the expiration of the fourteen days, he should have it pointed out to him that by his dilatoriness you will have to pay a penalty of perhaps 10s. or £1 before you can have the contract stamped; without being stamped the contract could never be legally enforced.

When a formal contract is required it is usual for the vendor's solicitor to prepare it in draft (on draft paper) and to submit it to the purchaser's solicitor for his approval. If one of the standard forms above mentioned is used the draft is often prepared on a print thereof. Sometimes

the purchaser's solicitor will raise questions before approving the draft contract. He may (for example) ask whether the road fronting the premises has been made up and taken over by the local authority and all road charges paid; whether a particular passage-way adjoining the property belongs to the vendor or whether he has only a right of way over it; whether there are any restrictive covenants forbidding the use of the land for any trade or business; and similar questions. When these are answered to his satisfaction, he returns the draft contract approved either unaltered or else revised in red ink (after making a copy of the draft agreement to keep—showing on it the red ink alterations he has made). His approval of the draft is put at the end of the draft contract in some such form as "Approved on behalf of the Purchaser" or "Approved as revised in red on behalf of the Purchaser" or "Subject to our marginal notes we approve this draft on behalf of the Purchaser," adding in all cases his signature and address and the date of approval or revision.

Instead of raising these points in correspondence or by marginal notes on the draft agreement or contract, a form of "Enquiries on Contract for sale" is sometimes used. These forms can be obtained from most Law Stationers, but when used care must be taken to see that the same points are not raised again on delivery of the Requisitions on the Title. The inquiries are not requisitions on the title, but a convenient means by which the purchaser's solicitor obtains further information on points necessary to enable him to approve the contract on behalf of his client (see Chapter IV).

The form of the contract being now agreed, the vendor's solicitor and the purchaser's solicitor each engross one "part" or form of the agreement (on stout paper) which they each get their own client to sign. If a printed standard form of contract is utilized, the engrossments are, of course, made on further printed copies. In some instances owing to the absence of the vendor or purchaser the contract is signed on his or her behalf by an agent or attorney. Before accepting such a contract, the other party's solicitor should be satisfied that the agent or attorney is duly authorised and has power to sign.

Both "parts" of the contract having been engrossed and signed, the solicitors arrange an appointment to meet and "exchange" them. Etiquette provides that this appointment shall be at the office of the vendor's solicitor, although this is always a matter of mutual arrangement. At the appointment one solicitor will read his agreement out to the other to see that both parts are in exactly similar words and they then exchange their agreements, the vendor's solicitor taking the part signed by the purchaser and the purchaser's solicitor the part signed by the vendor. If there is a plan attached to the agreement, the plan on the one part should be inspected and checked against the plan on the other part and it is highly advisable (though unfortunately not always done) that the vendor and purchaser should sign the plan as well as the body of the contract. If the part handed to you has a plan which is not signed, it is desirable to ask the other solicitor to sign it on his client's behalf. On taking the new part of the agreement the solicitor should see that

it is properly signed. The signature need not necessarily be witnessed.

If a deposit is required but has not previously been paid, or it is a term of the contract that the purchaser shall pay a deposit (or further deposit) on the signing of the contract—usually 10 per cent of the purchase money—the purchaser's solicitor should hand over a cheque or cash for such deposit when handing over the part of the agreement his client has signed. If the contract does not state that the deposit has been paid "immediately before the signing of this contract," the vendor's solicitors will endorse a receipt for the amount on the part agreement he is handing over to the purchaser's solicitor. The usual short form is "Received the within deposit of (£50) this day of 193.. (Signed) A. B., Vendor's Solicitor."

These matters are all provided for in the standard printed Conditions.

It is important to see that both parts of the agreement are stamped with a sixpenny stamp. It is usual either to engross the agreement on paper on which a sixpenny stamp has been previously impressed, or for the vendor or purchaser to sign the agreement over a sixpenny adhesive stamp (a sixpenny postage stamp). If not already stamped at the time of exchange, the solicitor in default should give the other party's solicitor sixpence to enable him to put the matter right.

It is sometimes left until the time of exchanging the contracts to fix the actual date to be inserted in the contract as the date for completion. This is usually fixed at about a month from the date of the contract (care being taken that the date so

agreed and fixed does not fall on a Sunday or Bank Holiday). Where the title is long and complicated (or it is apparent from other circumstances that the matter cannot be dealt with in a month) a longer period should be fixed, and an inquiry of the vendor's solicitor will usually elucidate information on this point.

There remains the subject of a contract for sale and purchase of property at an auction sale. In this case when the vendor has instructed his solicitor to act for him, the solicitor joins with an auctioneer in the preparation of a circular or brochure described as "Particulars and Conditions of Sale" which is printed and distributed amongst those likely to be interested or proposing to attend the auction sale. The auctioneer prepares the particulars of the property and the solicitor adds the conditions.

The solicitor's clerk can readily obtain prints of various particulars and conditions of auction sales from an auctioneer and very probably he will find several different prints in his own office. He will observe that the conditions of sale are very similar to the conditions in an ordinary sale and purchase agreement and in most cases express that the property is sold subject to one of the general printed forms of conditions of sale already referred to (i.e. National Conditions of Sale, General Conditions of Sale, etc.). One of the important conditions of a sale by auction is that if the purchaser fails to complete he may forfeit his deposit.

The solicitor for the vendor usually attends the auction sale for the purpose of answering any query on the title or conditions of sale which a would-be purchaser may ask, but takes no other

part in the auction. The auctioneer knocks down the property to the highest bidder (unless the property is withdrawn because the reserve fixed as the lowest price to be accepted for the property is not reached), receives the deposit, usually 10 per cent, from the purchaser and obtains his signature to the memorandum incorporated in a print of the particulars and conditions which he (the auctioneer) retains. The auctioneer then signs a duplicate memorandum as agent for the vendor which he hands to the purchaser with a receipt for the deposit. Wherever possible, the auctioneer obtains the name of the purchaser's solicitor to whom the abstract of the vendor's title is to be sent and gives this information to the vendor's solicitor.

When properties are offered for sale by auction and not sold, the particulars and conditions of sale used at the auction are frequently utilised on any subsequent sale by private treaty, thus obviating the preparation of a fresh contract. If this course is adopted, care must be taken to see that any necessary alterations are made (e.g. as to the date for completion) and that the alterations are initialed by both parties.

CHAPTER III

DEDUCING THE TITLE

IMMEDIATELY after the contracts for sale have been exchanged, or if the sale has been by auction immediately after the auction, the vendor's solicitor should commence to prepare the "abstract" of the vendor's title. The abstract is really an epitome of the deeds showing the title or right to possession of the vendor to the premises he has agreed to sell, and is prepared in special form. There is usually a period of fourteen days from the exchange of contracts for the delivery of the abstract of title to the purchaser's solicitor, but in a good many instances the abstract of title is delivered to the purchaser's solicitor a day or two after the date of the contract, or if ready may be handed over at the actual time of exchanging contracts. There is no useful object served in keeping back the abstract if it is ready for delivery.

We will assume that a vendor has brought a bundle of his title-deeds to his solicitor and that this bundle is now in front of the clerk for him to prepare the abstract of title. This is one of the earliest important tasks given to a clerk to do.

On opening the bundle the solicitor's clerk will probably find a quantity of miscellaneous papers and deeds—some important, others quite unimportant. There will be the actual deeds themselves, probably an earlier abstract of title, an insurance policy or policies, and some miscellaneous correspondence. There may be a list of the deeds inside the parcel which will help the clerk to sort them out.

He should first of all look for the earliest deed to start his abstract. (This will be the "root of title" deed referred to in Chapter II.) If the property is freehold this deed must be at least thirty years old. In the case of leasehold property the purchaser is entitled to an abstract or copy of the original lease, and to thirty years' title under the lease going back from the date of the contract for sale. This means that the abstract to leasehold property will start with the lease and then (if the lease is more than thirty years old) leave a gap, continuing with a deed thirty years or more old under which some purchaser became possessed of the lessee's interest in the property. Where there have been several changes of ownership in the period between the lease and the commencement of the thirty years, the solicitor's clerk will, of course, avail himself of the right to omit these earlier deeds, but if there are only one or two assignments, it is not unwise to abstract them shortly so as to show a complete chain of ownership. Where, however, the production of such earlier deeds is likely to give rise to any questions or requisitions on the part of the purchaser's solicitor, it is wise to leave them out.

If there is an earlier abstract of title with the deeds, the task of the solicitor's clerk may be lightened. On perusing it he can look for his "root of title" deed and if it has been correctly abstracted, he can copy it out for his new abstract (together with all the other deeds in the abstract) and confine himself to adding to the new abstract, the deeds and documents of title which follow the last deed abstracted.

We will assume, however, that the solicitor's

clerk has no abstract from which he can copy. He must, therefore, learn how to abstract them for himself. He procures some sheets of brief paper and types at the top of the first page on the right hand half of the sheet—

"Abstract of the Title of *John Smith* to freehold property known as Hill Place, Oldcastle, Surrey.

"Hereditaments" (sometimes used to denote property) is a somewhat formidable word, but only means land or houses. It is one of the words of ancient law remaining to-day, and is frequently used in connection with conveyancing.

The preparation of an abstract of title is an art which has to be acquired by practice. One has to learn how to condense matter without sacrificing the sense; and also how to discriminate between covenants and recitals which can be dismissed in a few words and those which must be set out at length. Before actually commencing his abstract, the solicitor's clerk should ascertain whether his principal or firm prefer their abstracts to be prepared in the old way or have adopted the new abbreviated form set out in the Sixth Schedule to the Law of Property Act, 1925. Enquiry amongst a number of solicitors has elicited that the old full abstract is still preferred to the new method. We will, therefore, prepare our abstract in the old way.

The date of the deed should be given in the left hand of the margin (which margin should be about 3 in. wide). Under the date should be stated the amount of the stamp duty paid on the deed—as "Stamp, £3 15s. 0d."

The deed should then commence on the same line as the date: "By conveyance of this date made between James Brown of Ashtead, Surrey, Carpenter (vendor), of the one part and William Green of Ashtead, aforesaid, Bricklayer (purchaser) of the other part.

The recitals should follow a further inch or so inside the body of the abstract, and should commence "after reciting." Every fresh recital should commence "after reciting."

The words commencing "It was witnessed" should appear in line with the words "By conveyance," etc.

The parcels (i.e. the description of the property —which usually commences with the words "All that") should be written in the right hand half of the abstract.

The habendum (i.e. the words commencing "To hold") should encroach an inch or more to the left of the page than the parcels.

The covenants and acknowledgments, also the schedule or schedules may be spread out across the page except to where the first or date margin is placed. This margin must always be kept clear for the purchaser's solicitor's notes.

The fact that the deed was "executed," i.e. signed and sealed and witnessed can be dismissed with the words "Executed and attested." These should be inserted in line with the "parcels."

It is obvious that the above description is not fully informative, and accordingly, one or two abstracts of title of current sales and purchases should be perused, from which the solicitor's clerk can take a precedent.

The solicitor's clerk will do well to remember that

deeds are abstracted in the past tense (for example, "It *was* witnessed").

The following points should always be borne in mind in preparing an abstract of title.

Powers of Attorney

Where any abstracted deed was executed by someone under a power of attorney created on or after 1st January, 1926, the purchaser's solicitor is entitled to production of the power of attorney and to have a sufficient extract free of charge (unless the original power of attorney is to be handed over to him on completion), although the power of attorney is prior to the root of title.

Restrictive Covenants

Where the land is sold subject to already imposed restrictive covenants, the purchaser is entitled to an abstract or copy of them, even where such covenants are contained in a deed earlier than the root of title. In this connection, however, it should be borne in mind that a restrictive covenant made before the coming into force of the Law of Property Act, 1925 (i.e. 1st January, 1926), is not binding against a purchaser unless he has had notice thereof—and that a restrictive covenant made after the 1st January, 1926, must (to be binding on a purchaser) be registered as a land charge. When property is being sold subject to already imposed restrictive covenants, the practice is to deliver a full copy of the covenants with the draft contract, the copy so supplied being deemed to be part of the abstract of title.

Description of Land by Plan

Where in a deed forming the root of title, the

description of the property is by reference to a plan on an earlier deed, the purchaser can demand a copy of the plan on the earlier deed free of charge. If the deed forming the root of title itself has a plan, this plan must be copied and attached to the abstract. If the same plan appears on any subsequent deeds, it is not usual to attach further copies, but to add a note that "The plan is the same as the plan drawn on (or attached to) the before abstracted (Conveyance) of the day of 19..."

Abstracting Wills

While nearly every solicitor will probably continue to abstract wills under which either the land itself passes by description or there is a general gift of all property (which would include the particular land) it is strictly unnecessary in law to abstract the will. The vendor is only required to abstract such documents of title as pass the legal estate, and when he is selling as the personal representative of a deceased owner the Grant of Probate (or Administration) is the only document under which the legal estate becomes vested in him, and an abstract of the will (and also even proof of death of the testator or intestate) is unnecessary.

Tenancy Agreements

If there are any subsisting leases, underleases or tenancy agreements of the property, particulars of them should be abstracted, even where they date back to before the root of title.

Equitable Charges

Equitable charges, i.e. documents which do not

create a legal estate, need not strictly be abstracted, but it would appear to be wise in some instances to give short particulars of them.

Fire Insurance

It is usual to give particulars of the fire insurance in the abstract. Strictly speaking, these particulars should be furnished to the purchaser's solicitor at the time of exchanging contracts. Notice of the interest of the purchaser under the contract should be given to the Insurance Company concerned by the purchaser's solicitor immediately after the exchange of contracts. The property is at the risk of the purchaser as from the date of the contract.

Generally

It is wise to abstract all documents (such as Certificates of Change of Numbers, Search Certificates, Notices of Assignment, etc.) as will save the raising of subsequent requisitions by the purchaser's solicitor.

CHAPTER IV

INVESTIGATING THE TITLE

I. EXAMINING THE DEEDS

THE investigation of the vendor's title to the land or house he is selling is a very important matter. It is here that the responsibility falls upon the shoulders of the purchaser's solicitor of satisfying himself that the vendor has a good title to the property. Fortunately, the greater number of titles are of a simple character and present no real difficulty. If a perfect chain of deeds of an ordinary character, e.g. conveyances, assignments, transfers of mortgage, etc., is produced showing how the property passed from one person to another, the solicitor's clerk can deal with the same without any fear. But should questions of settled land, trusts, or other similar matters arise, the solicitor's clerk should (in his early days) refer the matter for his principal's consideration.

We will assume that the contracts have been exchanged and that the purchaser's solicitor is now in possession of the abstract of title which, as already explained, has been prepared and delivered by the vendor's solicitor.

The first thing the purchaser's solicitor should do is to mark on the endorsement a memorandum of the date the abstract is received by him and the time allowed by the contract for the requisitions to be sent in.

The next thing he should do is to see that the first deed shown in the abstract is the "root of

title" deed mentioned in the contract for sale. The abstract should then be carefully perused to see that it contains particulars of all documents which show the change of ownership from one person to another, viz. that John Smith who bought in 1910 was the person who sold in 1916. If the person who sold in 1916 was not John Smith and the 1916 deed immediately follows the 1910 deed there is obviously some deed missing from the title, and a note thereof should be made in pencil in the margin of the abstract.

If the vendor's solicitors have marked on the abstract the stamp duties paid on each deed, the purchaser's solicitor should check the same with a list of stamp duties current at the date of the deed and tick them in pencil or red ink. A list of such stamp duties can be found in almost every solicitor's diary or desk book. If the vendor's solicitor has not marked the stamps, the purchaser's solicitor should himself insert them in pencil under the date of each deed so as to be able to check the amount with the stamps on the deed itself.

The purchaser's solicitor should be most careful to peruse the description of the property in each deed and see that they all agree as to the identity of the property. If there are any plans in the abstract they should be carefully examined and the property identified from them. If any difficulty arises the purchaser himself should be consulted or the vendor's solicitor should be asked to point out on the plan exactly where the particular house or land is situate. The plans should also be carefully examined with any plan on the contract. This question of identity is most important

in new building estates and small plots of land and it is not uncommon for land to be conveyed which differs extensively from the land pegged out on the site. The author knows of several cases where a deed of rectification has had to be entered into to put this matter right and knows of at least one case where a house was actually erected by a purchaser on a different site to that which was conveyed to him.

It is a good idea to make an epitome of the title showing the changes in ownership. This can be checked up with the abstract and will draw attention to any defects which arise.

On the first perusal of the abstract, mortgages should be particularly noted, and the abstract carefully followed to see that such mortgages have been paid off and discharged. If there is a mortgage still outstanding, provision will have to be made by the vendor's solicitor to pay it off either before or at completion. If the mortgage also affects other property, and is not being paid off either before or on completion, the mortgagee will have to join in the conveyance to free the property from the mortgage. If the vendor is a mortgagee selling under a power of sale in a mortgage, the abstract of the mortgage should be perused to see if the power of sale is given in the mortgage deed, although it should be remembered that the mortgagee has a statutory power of sale.

It very often happens that some of the deeds forming the chain of title relate to a larger property of which the particular house or land now being sold is a part only. In such a case the vendor's solicitor usually pencils on the abstract the name and address of the person at whose office such

deeds can be inspected, i.e. at some other solicitor's office, or he may produce a "marked abstract," i.e. an old abstract showing that such deeds were inspected at some earlier date by some solicitor acting for the then purchaser.

In such a case the present purchaser's solicitor should peruse the succeeding deed in the abstract to ascertain that such deed contains a "covenant for production" (i.e. an undertaking by the person retaining the deed of the larger land to produce the deed retained by him whenever required by the purchaser). If not, a pencil note should be made on the abstract that there is no covenant for production, and the matter raised on the requisitions being sent in. If it is subsequently ascertained that there is no covenant for production, it may be necessary to obtain an acknowledgment from the person holding such deeds at the time.

Another important matter which should be looked for is whether there are any restrictive covenants affecting the land. These may have been disclosed by the vendor in the contract for sale, but are sometimes left undisclosed. If they are mentioned in the abstract of any deed, the purchaser's solicitor should ask the vendor's solicitor for a copy of them—even if they are set out in a deed earlier than the root of title unless as before mentioned a copy has been delivered with the draft contract. Where such restrictive covenants were imposed on the land before 1926, the purchaser is not bound by them unless he (or his solicitor) has had notice of them. If they are imposed after 1925 they have to be registered as a land charge before any purchaser can be bound by them.

The purchaser's solicitor should see that the abstract discloses that all deeds which are required to be registered in Middlesex or Yorkshire have been so registered. He should also see that any property which is compulsorily registrable at H.M. Land Registry has been duly registered. The practice in registration at H.M. Land Registry is dealt with in Chapter VIII.

The purchaser's solicitor should also bear in mind such points as (1) Bankruptcy of a vendor—whether the subsequent deed abstracted discloses the title of the trustee of the bankrupt to sell; (2) Claims for death duties—particularly those arising before 1926. A purchaser who takes the property when he has had notice of such duties is liable to pay them, and the purchaser's solicitor should note the matter in the margin of the abstract with a view to seeing that they are discharged before he completes his purchase.

The abstract having now been carefully perused, an appointment should be obtained from the vendor's solicitor to examine the deeds with the abstract. At such appointment all title-deeds in the vendor's possession included in the abstract are examined against the abstract.

If there is a mortgage existing on the property and the deeds are therefore in the possession of some other solicitor on behalf of the mortgagee—the deeds must be inspected at the mortgagee's solicitor's office. The mortgagee's solicitor's costs of producing such deeds are payable by the vendor.

If the deeds are at a country solicitor's office and a London solicitor requires them to be produced at the office of the vendor's solicitor's London Agents' office—a fee for production will have to be

paid to such agents by the purchaser's solicitor. All deeds not in the possession of the vendor's solicitors (but subject to a covenant of production) and which can be traced as being in the possession of some other solicitor should be inspected at such other solicitor's office and his fee for production paid. These fees for production of deeds have all (except as above) to be paid by the purchaser and he cannot ask the vendor to refund them or even contribute towards the expense. The vendor can only be compelled to produce, or arrange for production of, deeds in his possession or in the possession of his mortgagee or trustee free of expense to the purchaser. The purchaser's solicitor, on examining the deeds should have a junior clerk with him to read out the abstract to him, while he himself peruses the deeds. The date of each deed, the stamp duties thereon, and the parties to the deed should be first checked before the deed is read over. The clerk should also mark in the margin under the date of the first deed a note of the examination as: "Original produced and examined at Messrs. Sniggle and Blinks' office, 1, Staple Inn Temple, E.C., this 1st day of April, 1933. (Signed) Jones, Brown & Co., 1, Gray's Inn Terrace, E.C."

Each subsequent deed should be marked as "Original produced and examined as above, 1/4/33, J. B. & Co."

As the reading progresses the reader should pause wherever a marginal note has to be considered. If something material in the deed has been omitted from the abstract, it should be dictated to the reader who will insert it in the abstract. If there is still something missing, further pencil notes should be made in the margin of the abstract.

Any endorsements on any of the deeds must be perused to see whether they affect the property sold.

After all deeds in the abstract have been duly examined, the purchaser's solicitor should carefully and quietly peruse the abstract in his own office and see what pencil notes and queries have been dealt with and disposed of by actual examination of the deeds, what the general effect has been in establishing a good title and what queries or points remain to be raised on the title by requisitions.

II. THE REQUISITIONS

The deeds having been examined, the purchaser's solicitor now prepares and sends to the vendor's solicitors his requisitions on title, which are really the questions he raises on the title.

These requisitions are of a dual character. The purchaser's solicitor will in them raise all questions arising on the title which perusal of the deeds has failed to clear up. He will also in his requisitions deal with all general enquiries relating to the property which a purchaser is entitled to ask, such as whether the roads and footpaths adjoining the property have been taken over by the local authority, or whether any sanitary or other notices have been served in relation to the property which have not been complied with. These general inquiries are not, of course, repeated if they have been cleared up either by "inquiries" or correspondence before exchange of contracts.

With regard to the requisitions arising out of the abstract of title, such questions as the undermentioned are typical of what a purchaser will enquire.

"Is John Smith of Stockwell, Jobmaster (the purchaser named in the conveyance of 10th May, 1905), the same person as John William Smith of High Street, Balham, Motor Engineer, the vendor named in the conveyance of 4th November, 1921?"

What evidence can the vendor furnish as to this?

"Please give the date and place of death of William Scott, of Barnstaple, named in the conveyance of 16th June, 1922"

"Did any death duties arise as a result of his death which are still outstanding and to which the property remains liable?"

"How does the vendor identify the property described in the conveyance of the 10th May, 1905, with that described in the conveyance of the 14th April, 1930?"

"What evidence can the vendor furnish that the premises described in the conveyance of the 8th July, 1909, as 1, Mafeking Villas, are the same premises as those now known as 203, Long Lane?"

The requisitions are usually written or typed on foolscap paper, and headed with the names of the parties and the description of the property, as—

Smith to Brown,
1, St. Mary's Road, New Bury.

The left hand side of the sheet is headed "Requisitions on Title," and the right hand side,

"Answers." The purchaser's solicitor puts his questions and requisitions on the left side and the vendor's solicitor puts his answers on the right hand side. At the end of the requisitions the purchaser's solicitor adds the date, his signature, and address, and that he is the "Purchaser's Solicitor."

On receipt of the requisitions, the vendor's solicitor makes a copy to keep and then proceeds to answer them, applying to his client for any information which may not be in his possession. The vendor's answers can be very brief. Many of the questions can be answered "Yes" or "No" (although some careful solicitors will put it: "The vendor says 'Yes,'" or, "The vendor says 'No.'" or, "Not to the knowledge of the vendor"). To such questions as: "Is the property subject to any rights of way or other easement?" the usual answer given is "The vendor is not aware of any, but an inspection of the property will show." The vendor's solicitor signs his name at the end of the answers, adding his address and the date, and that he is the "Vendor's Solicitor" and returns the requisitions and his answers to the purchaser's solicitor.

If, on perusal, the purchaser s solicitor is not satisfied with the answers given to any requisitions or requires further information arising out of the answers, he prepares and sends the vendor's solicitor further requisitions to be answered, and in difficult cases this process may be repeated several times.

It should be understood that the purchaser's solicitor can only make further requisitions arising out of the vendor's answers and not raise any *fresh* requisitions unless the vendor's solicitor

consents to deal with them. If he has omitted to ask something which he should have included in his original requisitions he cannot put it to the vendor afterwards or include it in any further requisitions, and if he does so, the vendor's solicitor may refuse to answer, or answer as a matter of courtesy only.

The usual way to put the further requisitions is to give the number of the questions from the original requisitions and say—

"4. This requisition is repeated."

"4. Arising out of the vendor's answer to this requisition—"

The document, instead of being headed "Requisitions on Title," will be headed "Observations on Answers to Requisitions on Title."

The vendor must answer the requisitions truthfully and without reserve, even if they disclose something detrimental. If he gives false answers to any questions the purchaser could afterwards sue him for breach of contract.

Practically every contract contains a provision that if the purchaser makes and insists on any requisition or objection which the vendor is unable or unwilling to comply with, the vendor shall be at liberty to give notice to the purchaser of his intention to rescind the contract unless the requisition or objection is withdrawn. If the purchaser does not then withdraw the requisition or objection, the contract is at an end and the vendor has to return to the purchaser the deposit, but the purchaser cannot claim any interest on the amount or his costs.

If for any reason the requisitions cannot be delivered within the time fixed by the contract, an

extension of time should be obtained from the vendor's solicitor and noted on the abstract. It is usual to grant an extension but sometimes it is agreed to answer as a matter of courtesy as if the requisite items had been delivered in time.

III. SEARCHES

Apart from perusing the title-deeds, and making requisitions on the title, the purchaser's solicitor must also make various searches in public registers as to any incumbrances on the property.

The principal of these are Land Charges and Local Land Charges.

As previously stated, the purchaser is only bound by such restrictive covenants and other incumbrances on the title arising before 1926 if he has notice of them. All such charges arising since 1925 have to be registered by the person imposing them and it is therefore the duty of a purchaser's solicitor to search for them.

Under the Land Charges Act, 1925, the following matters affecting land are registrable at the Land Charges Registry, Lincoln's Inn Fields, W.C.—

Pending Actions (that is, actions or proceedings in Court relating to land—including a bankruptcy petition).

Writs or Orders affecting land (such as a Receiving Order in Bankruptcy, a Writ of Fi. Fa. or Elegit, an Order for Sale or Foreclosure, and an Order under the Lunacy Act).

Deeds of Arrangement made by a debtor for the benefit of his creditors.

Land Charges.

Rents or annuities charged on land.

Legal mortgages not protected by the deposit of deeds.

Equitable mortgages or charges.

Contracts for sale or purchase of land.

Restrictive covenants and other easements created on or after 1st January, 1926.

The search of the above registers is very simply effected by filling up in duplicate a form of application for an official search of the Land Charges Register (Form L.C. 11), describing the land and giving the name, address and description of the person or persons against whom the search is to be made. The search form is posted to the Land Charges Superintendent, H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2, with a postal order for the appropriate fee (1s. 6d. per name), and will be returned with a note endorsed on it that there are "no subsisting entries" or giving a reference to any entries which are given in the Alphabetical Index. If there are any entries subsisting the purchaser's solicitor can peruse them at the registry on payment of a further search fee or office copies of the entry will be sent to him on payment of the prescribed fee (viz. 1s. 6d. each entry).

The land charges search should not be made until a few days before the day fixed for completion —so as to have it as up-to-date as possible. The search is usually made as soon after 4 p.m. as possible on the day it arrives at the registry (provided it arrives before 10.30 a.m. on that day). On Saturdays it will not be issued, unless specially asked for some days beforehand to be sent out on that day. The certificate of search covers all

registrations effected up to the close of the registry on the day of the date of the certificate.

The other land charge searches are local land charge searches.

These are made in the registers kept by county councils, county borough councils, borough councils, urban councils, and rural district councils, where are kept particulars of local charges affecting land, such as restrictions on the use of land under town planning schemes registered before 1932, road charges outstanding and other matters under which local authorities have a charge or right to control the use of land.

It is usual to search two registers for local land charges—

1. The county register—i.e. London County Council, Devon County Council, etc., etc.
2. The local register—i.e. the Borough or Urban or Rural District Council.

While there may be some overlapping—it is best to search both kinds of local registers to ensure that everything in their registers has been covered by enquiry.

The search form (L.L.C. 1) should be filled up in duplicate and sent to the office of the appropriate county or local authority and should describe the land which is the subject matter of the search, if necessary by means of a plan. It is sent by post and a fee of 5s. sent by postal order. If there is more than one parcel of land included in the same search form an additional 1s. 6d. for each additional parcel of land should be sent. The local Registrar will return the search form with a note that there are no subsisting entries or giving

particulars of the charges. If the applicant requires copies of any entries in the local register he can have same on paying a fee of 2s. 6d. for each copy.

It is usual (in the case of house property), in addition to the local land charges search, to make enquiry of the clerk to the borough or urban council as to any town planning schemes in operation or sanitary or other notices affecting the property which have not been complied with. This is done by letter and the fee of the clerk (usually 5s.) sent with the letter.

If the property is situate in Middlesex (outside the County of London) or in Yorkshire, search should be made at the Deeds Registry to see whether any entry against the vendor's name in respect of the property can be traced. The Middlesex Registry fee for an official search is 3s. a name for a few years' search respecting property up to £3,000 in value.

There are three Yorkshire registries—

North Riding—at Northallerton.
East Riding—at Beverley.
West Riding—at Wakefield.

The official search fees are—

7s. 6d. for searching in any one name for a period not exceeding ten years;

A copy or extract of or from the registered document can be obtained for 4d. a folio (first two folios, 1s.).

Where there appears on the title the appointment of an executor or administrator of a deceased

proprietor and the vendor's solicitor cannot produce the Probate or Letters of Administration as evidence, the Will or Letters of Administration can be personally inspected at the Principal Probate Registry, Somerset House, London, on payment of a search fee of 1s. If the will was proved or Letters of Administration were obtained at a District Probate Registry and it is more convenient to search same there than to send up to London, this can be done.

If no proof of the death, marriage, or coming of age of some person material to the title can be obtained on perusing the deeds, a certificate of the birth, marriage, or death can be obtained from the General Register Office, Somerset House, London, if the name, address and description, and date and place of birth, marriage, or death are all available. The fee for such search is 3s. 7d. including a certified copy of the birth, marriage, or death certificate.

If the vendor is a limited company, it is wise to search the file at the Companies' Registration Office, Somerset House, London. This must be done personally, or through a London agent. The search fee is 1s.

The file will disclose all material details of the company, the date of its incorporation, where its registered office is situate, what its authorised capital is and how much has been issued, who are the directors and—most important of all—what mortgages or charges on its property are outstanding. It will sometimes be found that the company has created a charge on "all its property," in which case the vendor's solicitor will have to arrange to obtain the concurrence of the

mortgagees in the sale or get the individual property released from the charge. The register will also show if the company is in liquidation and whether a liquidator has been appointed, in which case the company cannot sell except through the liquidator.

CHAPTER V

PREPARING FOR COMPLETION

THE title having now been investigated, the requisitions satisfactorily answered, and all proper searches made, and the purchaser's solicitor being satisfied that the vendor has a good title to the land, the purchaser's solicitor will draw up the necessary conveyance or assignment. The form of it will be already familiar to him from the previous deeds and there will no doubt be either a stock form in his office, or he can use a draft conveyance of some other property previously purchased by some client of his and pencil in all necessary alterations for the typist to prepare the draft.

It is not proposed here to give a specimen form of conveyance (of freeholds) or assignment (of leaseholds), but the draftsman should remember the following points—

He will remember that the deed starts with "This Conveyance" or "This Assignment." This is an innovation of the Law of Property Act, 1925. Previous conveyances and assignments were described as "This Indenture" (from the habit long since passed away of cutting off or indenting the top of the parchment on which the "Indenture" was written).

He should see that the vendor and purchaser are accurately described. If there is a change in the vendor's address or description since the last title deed, the vendor should be described as "formerly of , but now of" (or "formerly a coach builder but now a motor engineer"). If

the property is leasehold the lease should be recited shortly, giving the date and parties to the lease, the description of the property from the lease, the term and the rent.

The material words showing that the vendor is entitled to the property or the benefit of the lease should be given, and the formal words by which, in consideration for the purchase money, the vendor conveys or assigns the property to the purchaser should follow.

If any fresh restrictions are to be imposed they should be set out, preferably in a schedule, and a covenant by the purchaser to observe them inserted. In case of leaseholds, a covenant by the purchaser to observe the covenants and provisions of the lease and to indemnify the vendor is implied in the Law of Property Act, 1925, but it is usual to say that the covenants implied by the particular section of the Act are incorporated in the deed. And if executors are selling, words should be added that the covenant for indemnity shall apply for the protection of the estate and effects of the deceased. If any of the title deeds are to be retained by the vendor—as relating to other land or to a larger piece of land of which the present conveyance is part, an acknowledgment for production and undertaking for safe custody should be put in the draft deed. Trustees, personal representatives, or mortgagees do not give an undertaking for safe custody.

In some instances the mortgagee (if there is one) joins in the conveyance and in consideration of the payment to him of the mortgage money (unless he is satisfied with the security remaining), releases the property from the mortgage. It is better, if

possible, to keep the conveyance clear of these complications and to take a discharge (which under the Law of Property Act, 1925, can be of very simple character) by endorsement of a receipt on the mortgage itself. The conveyance will end with these interesting but somewhat old-fashioned words, "In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written." Even the new Law of Property legislation failed to modernize this old-world conclusion to a deed.

The deed will finish with the signing and witnessing of the deed by the parties. The draft will, therefore, have a wording like this at the end—

"Signed, sealed and delivered by the above named

in the presence of

The signing of the deed can be understood by all. The sealing is a survival of old custom whereby people whose ability to sign their name was of a doubtful character sealed their deeds with their signet ring. Nowadays the sealing has largely degenerated into the habit of putting on a "blob" of sealing wax, or the sticking on of an adhesive wafer seal. "Sealing" has to-day a significance in distinguishing between "deeds" under seal and "instruments" under hand only. A deed is much more important than an instrument under hand merely. Delivery is essential to the proper execution of a deed and is usually signified by the person signing and sealing a deed placing his finger on the seal and saying: "I deliver this as my act and deed." In these days this declaration of delivery

is often forgotten or ignored, but it still appears to be strictly proper and it is just conceivable that on evidence being furnished that the formality was not complied with, the deed would be ineffective. We need not however, concern ourselves too closely with this point which is more of academic than practical interest.

The draft conveyance being now typed out, the purchaser's solicitor will send it to the vendor's solicitor for approval by him on the vendor's behalf. It is sometimes sent in at the same time as the requisitions (to save time), but this is not to be recommended. It is a thoughtful kindness to have a carbon copy made of your draft and to present it to the vendor's solicitor for his use, thus saving him the trouble of making a copy to keep.

The vendor's solicitor will revise it (if necessary) in red ink and sign it at the end in the same ink—

> Approved (as revised in red ink) on behalf of the vendor, subject to our marginal notes
>
> Sniggle & Blink,
>
> 1st April, 1933.

If the purchaser's solicitor accepts the alterations made by the vendor's solicitor, he will then have the conveyance engrossed either on parchment or on parchment paper and will send it to the vendor's solicitor who will get his client to execute it and will retain it until completion, after having first examined or checked the engrossment against his copy draft. It may not be out of place here to make an observation on the subject of examination generally. Many clerks are apt to look

on the matter as a purely formal one and to endeavour to see how rapidly one can read. This is a great mistake—examination is a very important matter. In all documents which have to be examined, whether document against document, copy against original, or draft against draft, every word should be clearly and distinctly read and checked.

The date of completion is now at hand and an appointment is made by the two solicitors to complete the purchase at the vendor's solicitor's office, or some other convenient place. If there is a mortgage to be paid off at the time of completion, the completion will take place at the mortgagee's solicitor's office.

The vendor's solicitor should write to his client and ask him to send to him all receipts and demand notes for unpaid current outgoings. When these are in the vendor's solicitor's hands he will prepare a statement of figures (i.e. of apportionment of the current outgoings on the property).

For example, if the vendor pays rates and water rate and income tax (Schedule A or Property tax) he will furnish the current receipts or demands for these to his solicitor.

The statement of figures is headed with the date of the proposed completion, the names of the vendor or purchaser and the address of the property.

The vendor's solicitor will, as his first figure, put down the amount of the purchase money. From this he will next deduct the amount of the deposit —leaving the amount of the balance of purchase money. He will then proceed to work out the proportions of the various outgoings to be paid by him or allowed to the purchaser. Thus, where items

like rates and water rate, property tax and fire insurance have been paid in advance, i.e. to a date later than the completion, the vendor will be entitled to add to the purchase money the part of such outgoings applicable to the period following the completion (i.e. which the purchaser will get the benefit of). And where items like ground rent have been paid to a date before the completion and the purchaser will some day be asked to pay for these things—including the period in which the vendor has had the use or benefit of the property—the vendor should allow the proportion of these outgoings off the purchase money.

Take for example rates. General rates are usually payable quarterly or half-yearly at the commencement of the quarter or half-year. If the vendor has paid the rates in April and the purchaser takes over the house on 15th May, he ought to refund to the vendor the proportion of rates from the 15th May to the end of June (if quarterly rates) or end of September (if half-yearly rates). This is dealt with on the Statement of Figures by adding it to the balance of purchase money payable.

Take as another example, fire insurance. This is payable in advance to cover the next twelve months. If the purchaser buys at any time before the insurance runs out he ought to pay for that part of the insurance for which he gets the benefit of the cover. The proportion payable by him is, therefore, added to the purchase money he has to pay. With regard to fire insurance, the proportion payable by the purchaser is from the date of the contract and not from the date of completion. As from the date of the contract the insurance is for the purchaser's benefit.

The vendor's solicitor will make a copy of this statement of figures and send it to the purchaser's solicitor. The latter will re-calculate the proportions and then write to the purchaser to let him have cash or a banker's draft for the amount to be paid on completion. If the purchaser desires to attend the completion or it is in any way necessary for him to do so, he should be told the place and time he is to attend. In many instances, however, it is quite unnecessary for either the vendor or the purchaser to attend the completion.

The vendor's solicitor will, before the time of completion, have a list of the deeds made out in duplicate, one of which lists he will ask the purchaser's solicitor to sign as proof of their having been handed over. The vendor's solicitor will also endorse the fire policy with a memorandum that the interest of Mr. John Smith (the vendor) in the insurance is now vested in Mr. William Brown (the purchaser), and an endorsement to this effect afterwards obtained from the insurance company by the purchaser's solicitor.

If the deposit has been paid to an estate agent, the purchaser's solicitor will prepare and sign a letter addressed to such agent that the purchase having been completed the purchaser has no longer any claim on the deposit and that the same may be paid to the vendor. He will hand this letter to the vendor's solicitor.

If the property is in the occupation of a tenant the vendor's solicitor will also prepare and sign a letter addressed to the tenant directing him to pay his future rent to Mr. William Brown (the purchaser). If the house is vacant he should hand over the keys to the purchaser's solicitor.

It is a good plan whether one is acting for vendor or purchaser to prepare (before attending the completion) a memorandum of the various details to be attended to at the completion. Thus, the purchaser's solicitor would in his memorandum put down—

"See receipts for outgoings."
"Get all deeds as per abstract."
"Get conveyance duly executed by vendor."
"Get fire policy duly endorsed."
"Get keys or letter to agent."
"Release deposit."
"Pay balance of purchase money"

Each item in the memorandum can be ticked off at the completion as each detail is disposed of. The vendor's solicitor will date the conveyance and make his draft conveyance agree. The purchaser's solicitor will now take away the deeds and documents, and returning to his office, will complete the date and execution of the deed in his draft before putting the title-deeds in the safe to be dealt with next day.

The following day he will pencil at the top of the conveyance the amount of the conveyance duty to be paid, and will hand the conveyance to his clerk with the necessary cash to have the stamp duty impressed at the nearest Inland Revenue Office. At the same time, he will prepare and lodge the form of particulars required under the Finance Act, 1931. This form of particulars was originally required to be lodged in connection with a suggested Land Value Duty Tax. Although the operation of the tax has been suspended, the liability to give particulars of any conveyance, or

assignment (or lease exceeding seven years) lies on the purchaser or lessee.

If the property has to be registered in the Middlesex Deeds Registry or one of the Yorkshire Deeds Registries the solicitor will instruct his clerk to make the necessary copy or abstract of the deed and lodge it for registration. The conveyance will be returned in a few days time bearing the stamp showing that it has been duly registered.

If the property is leasehold there may be a covenant in the lease that all assignments, etc., should be registered with the lessor's solicitors or agents and a fee paid for such registration. Where this is the case, the purchaser's solicitor should ascertain who the lessor's solicitors or agents are, and after stamping produce the assignment and get it marked as registered.

The purchaser's solicitor will now send his client the title-deeds to the property, together with a list of them for him to sign and return as evidence that he has received them. The purchaser's solicitor will also send in his bill of professional fees based on the usual conveyancing scale and of the out of pocket payments he has incurred, and when he has received payment he can put away his papers knowing that that particular matter is finished.

The vendor's solicitor, on his part, must send the letter authorising the release of the deposit to the agent, and obtain payment of the amount due to the vendor and in due course account to his client for the amount he has received in respect of the sale, after deducting his costs.

If the conveyance imposes restrictive covenants, the vendor's solicitor will instruct his clerk to prepare and lodge at the Land Charges Department

of H.M. Land Registry, Lincoln's Inn Fields, the necessary form of application (Form L.C. 4) for registration of the covenants as a land charge under the Land Charges Act, 1925. Restrictive covenants are Class D. As the vendor takes the benefit of the restrictions it is his duty to effect registration. The form referred to gives sufficient indication of the information required.

It is not necessary to set out the restrictive covenants on the form, but it is desirable to do so, as it saves inquiry by subsequent purchasers. The application form may be lodged by post (fee 1s.) and in due course an acknowledgment is received from the department giving the number of the registration. This acknowledgment should be carefully preserved by being attached to the draft conveyance.

CHAPTER VI

LEASES AND TENANCY AGREEMENTS

TIME was when long term leases were the height of fashion. When our parents purchased their houses they were usually semi-detached, or terrace houses all in a row, and held under the same "ground landlord." It was a habit in estate development in mid-Victorian days for a landowner to contract with a builder to put up a row of houses, on the understanding that the builder should sell the houses "as leasehold" and the landowner should obtain from the buyer an annual "ground rent." The form of the transaction was fairly simple. The landowner would grant or enter into the lease as the lessor, the builder would join in to receive the purchase money for the house, and the purchaser would come in as the lessee. The lessor as the owner of the land would (by the direction of the builder) lease the land on which the house was erected to the purchaser for a long term (usually ninety-nine years) at a ground rent of, say, five pounds a year. Thus, at the end of ninety-nine years the successors in title of the lessor would come into possession of the land and house to which the lessee's successors would no longer have any right, their term having expired.

The conditions of these leases were usually very stringent. The lessee had to keep the premises in good repair and if the house was (at the end of the ninety-nine years) dilapidated it had to be put in order or a sum representing the amount required to put it in order paid to the lessor by the lessee.

The lessee had to keep it insured against fire and if it got burnt down to rebuild it, using the insurance money as far as it went and making good the deficiency out of his own pocket. He usually could not assign the lease or underlet the premises without the previous consent of the landlord and he had to pay his ground rent punctually or risk being dispossessed for non-payment. If he did everything he should do he was entitled to "quiet enjoyment" of the house for the term of his lease. While these leasehold premises are still with us they are gradually dwindling in number or "falling in" and it is more fashionable to-day to buy freehold premises than to saddle oneself with the obligations of a lease.

There are, however, still popular short leases of, say, twenty-one years' duration at full, or "rack" rentals which are largely used for commerce and trading purposes and the letting of shops. It is being generally recognized that one cannot visualize the rental values of land a hundred years hence, but one can more or less approximately gauge rental values of seven, fourteen or twenty years hence.

As in the case of sales and purchases, contracts for leases are unenforceable unless expressed in writing. (A lease for a term not exceeding three years, can, however be created without being in writing.) It is, therefore, very desirable to bind the lessor and lessee in written terms without waiting for the preparation of the lease itself.

The contract should describe the property accurately, defining exactly what is to be included in the lease, it should state the term to be granted, the rent to be paid and any special covenants or provisions which have been agreed upon between the

parties. Some solicitors avoid all controversy by setting out the form of the proposed lease in a schedule to the contract.

The form of the contract is usually drafted by the lessor's solicitor and approved by the lessee's solicitor, and after engrossment and signature is exchanged in a similar manner to that of a sale.

It is as well to remember to have the contracts engrossed on stamped (sixpenny agreement duty) paper or signed over a sixpenny adhesive stamp if the term of the proposed lease is less than thirty-five years, as otherwise the revenue officials will on presentation of the agreement for stamping, charge lease duty on the agreement and leave it to the solicitor to have his lease subsequently "denoted." The reason for this is that although the agreement may provide for the grant of a formal lease, the parties sometimes rely on the agreement itself.

If the lease is to contain an option for the lessee to purchase the property, it is important to have this fully set out in the contract, otherwise difficulty may arise as to the exact terms on which such option shall be exercised. As regards notice, the length of the title which the lessor shall deduce and the amount of the purchase money. The option must be registered as a Land Charge under the Land Charges Act, 1925.

If the proposed lessee desires proof of the right of the lessor to grant the lease, it should be specially provided for in the contract. If not, he is prohibited by statute from inquiring into the lessor's title[1]

In practice it is somewhat rare for a proposed

[1] Law of Property Act, 1925, sect. 44 (2), (3), and (4).

lessee to inquire into the lessor's title to the property. It is difficult to understand why this should be so. It is true that a lessee could sue a lessor for fraudulent misrepresentation, but this is a poor remedy for a lessee who subsequently finds himself ejected from the premises he has taken on lease as a trespasser.

The proposed lessee should be asked by his solicitor at the outset whether he is fully satisfied that the lessor is entitled to grant the lease or whether he requires the lessor's title to be inquired into.

It is not only an actual owner of property who can lease property. Tenants for life, trustees for sale, mortgagees in possession, personal representatives, and some others can grant leases of property. On the other hand a property owner who is under legal disability, such as an infant or a lunatic is debarred from entering into a lease.

Tenants for Life

A "tenant for life," i.e. a person entitled during his or her life to the income derived from property, can grant a lease or leases of the whole or any part of the settled property for a term not exceeding in the case of a building lease (i.e. a lease in which the lessee buys the house built on the land but not the ground itself and pays the lessor a "ground rent"), 999 years, or, in the case of any other lease (except a mining or forestry lease), 50 years.[1] The tenant for life must, however (*inter alia*) get the best possible rent for the property and every lease must be made by a deed which must contain a proviso for re-entry on non-payment of the rent within

[1] Settled Land Act, 1925, sect. 41.

30 days of the due date.[1] A tenant for life, can, however, grant a lease or agreement for tenancy for 3 years or less by writing under hand only.

If the lease is for over 21 years a tenant for life before entering into the lease must give one month's previous notice in writing to the trustees of the settlement of his intention to grant such lease, though any trustee can waive the notice, either in any particular case or generally.

The lessee, however (if dealing in good faith), is not concerned to see that the tenant for life has given notice to the trustees and will be taken to have given the best rent that could reasonably be asked for the property.

Infants

An infant (i.e. a person under 21 years of age), cannot grant a lease. Before 1926, an infant could deal with or dispose of land, but it was subject to his confirming or repudiating the dealing on his attaining his majority. This was unsatisfactory (from a lessee's point of view, at any rate) and the new legislation of 1925 deprived the infant of these rights, making it impossible for an infant to hold a legal estate in land[2]

Who can, therefore, grant such a lease on his behalf? Shortly, the position may be summarized thus—

1. If the infant was entitled to freehold or leasehold land on the 1st January, 1926, either absolutely or as a tenant for life, the land became settled land and vested in trustees under the Settled Land Act.

[1] Settled Land Act, 1925, sect. 42.

[2] Law of Property Act, 1925, sect. 1 (6).

2. If the infant subsequently became entitled to freehold or leasehold land it remained and remains in the hands of the executors of any will or the trustees of any settlement under which it was derived. Trustees acting for infants have special powers of management conferred on them by sect. 102 of the Settled Land Act, 1925, including powers to grant leases and accept surrenders of leases. This subject is further dealt with in subsequent chapters and the solicitor's clerk, it is suggested, should consider the matter very carefully where the beneficial interest in any property proposed to be leased belongs to an infant.

Lunatics

Where a proposed lessor is a person of unsound mind, he is obviously unfitted to grant a lease. If it is proposed to grant a lease from, or on behalf of, some lunatic, the proposed lessee should be advised that the only person legally qualified to grant such a lease is a receiver (or committee) duly appointed under the Act 53 Vict., c. 5[1] and Amending Acts. This receiver, who may be the husband, wife, brother, or other near relative of the "patient," has to apply to the Master in Lunacy for an order appointing him receiver and produce medical evidence of the mental disability of the patient, and evidence of the patient's "kindred and fortune." An order is then made appointing a receiver, who acts under the directions of the Master in Lunacy. If it is then proposed to grant a lease of any of the patient's property, application has to be made to the Master for power to do so and evidence filed to show that the proposal is in the patient's

[1] Lunacy Act, 1890

interest and that the rent proposed is the best that could reasonably be obtained for the property. The evidence as to rent has usually to be supplied by an auctioneer or estate agent. The same process has to be gone through on a sale of any of the patient's property, and on a sale by auction the reserve prices are fixed by the Master and passed on to the auctioneers in a sealed envelope.

Mortgagees

Mortgagees in possession may grant leases.[1] These are subject to various conditions, all of which are set out in sect. 99 of the Law of Property Act, 1925, to which the reader is referred.

The usual covenants on the part of a lessee are to pay rent, to keep premises in good repair, not to assign or underlet without the lessor's consent, to insure, and to deliver up in accordance with the repairing covenant at end of term. The usual covenant on the lessor's part is to permit the lessee to have "quiet enjoyment" of the premises on his paying his rent and performing his covenants. There is, however, no strict legal definition of "usual covenants," and while the phrase is a useful one to denote what is generally understood to be "usual" it must not be carried further than this. Special covenants would appear to include the restriction of the carrying on of all or any particular trades or trade.

After the lease has been agreed in form between the parties it is engrossed in two parts by the lessor's solicitor. One part (the lease itself) is executed by the lessor, the other (or counterpart) is sent to the lessee's solicitor for execution by the

[1] Law of Property Act, 1925, sect. 99.

lessee. After execution, an appointment is arranged for the lease to be "exchanged" at the lessor's solicitor's office, where the lessee's solicitor exchanges the counterpart—executed or signed by his client—for the lease—executed or signed by the lessor—and pays the lessor's solicitor's costs for preparing the lease and counterpart, which the lessee is liable to pay.

In some instances the lessor's solicitor retains the lease to stamp it, in which case the lessee's solicitor must also pay over the stamp duties on the lease and counterpart; in other cases each party stamps his own document. In each case it is purely a matter of arrangement. If the lease is for a term exceeding seven years, the form of particulars previously mentioned must be lodged with the lease.

Under-leases

An under-lease is, as its name indicates, a lease of premises by a person who is only the lessee of them himself. Where a lease is granted by a freehold owner it is known as a "head" lease. But there are many instances (where, for example, the head lease is a long term lease) in which the leasehold owner or lessee grants an under-lease of the property. The term of this lease must always be no more and should be less than the term remaining of the original lease. The usual term of such an under-lease—if intended to cover the whole remaining term of the head lease—is expressed to be for such remaining term (less one day)—i.e. the last day of the term is retained by the original lessee to enable him to give up the premises to *his* lessor on such last day.

In many short term leases—particularly those for 21 years—there is a proviso giving power to the lessee (or both lessor and lessee) to determine the lease at the expiration of the first 7 or 14 years on giving 3 or 6 months' previous notice in writing to the other party.

In cases where a lessee desires to assign or underlet the leasehold premises and has to obtain the landlord's written licence or consent, it is usual to approach the lessor or his solicitors and furnish the names of two or more references of the proposed assignee's or sub-lessee's standing and integrity. The lessor's solicitor will then "take up" such references, and, if the replies are satisfactory, will prepare and get signed by the lessor a licence to the lessee to assign or under-lease the premises to the proposed assignee or under-lessee. The lessee has to pay a fee for this licence—usually two or three guineas, but the licence does not require to be stamped.

Surrender of Lease

When a lessor and lessee agree to a surrender by the lessee of the remainder of the term of his lease, such surrender must be by a deed (except the surrender of a lease for not more then 3 years). This is prepared by the lessor's solicitor and approved by the lessee's solicitor and the lessor's costs of the surrender are payable by the lessee. The form of surrender, which can be obtained from one of the standard books of precedents, is simple in character. In many instances it is endorsed by engrossment on the lease itself.

Surrenders of leases are often effected when only a few years remain of a long term lease, and there

is a probability of the lessee being compelled to expend a considerable sum on "dilapidations" (repairs) to bring the property into good condition for delivery up to the lessor at the end of the term. In some cases it is where the lessor has actually served on the lessee a list of the "dilapidations" to be repaired. In such instances the lessee will sometimes negotiate with the lessor for settlement of the dilapidations claim and a surrender of the lease before the term has expired.

Sometimes a surrender is effected by what is known as a "merger." This takes place when a lessee purchases the lessor's interest in the land. In the past quarter of a century many large landed estates have been sold by auction or private treaty, and in very many cases the lessees eagerly bid for the lease of their own particular properties to turn their leasehold into a freehold or a sub-leasehold into a full leasehold interest. The purchase by a lessee of his lessor's interest does not, however, automatically merge the lease, notwithstanding that the buyer is not likely to sue himself for non-payment of rent or breach of covenant. There must be an intention or declaration by the lessee in favour of such merger.

This can to some extent be understood, by thinking of a lessee who buys his lessor's interest—not to get rid of the lease but to sell the lessor's interest to somebody else. If he buys up the ground rent to sell again, he obviously does not wish to have a merger but to keep the lease alive. What evidence of intention to merge the lease is required is more or less dependent on the circumstances of each case.

In cases registered at H.M. Land Registry

where a lessee having purchased his lease desires to close the leasehold register of his title, the application by him to close the leasehold title is evidence of intention and it is conceived that the same effect is obtained by his endorsing on his lease a memorandum that the same is cancelled.

Where a client purchases his lease, the fact that the same can be kept alive or cancelled should be explained to him, and if he has purchased to extinguish the lease, the memorandum above-mentioned should be endorsed on the lease and signed by him, to make matters perfectly clear. At the same time, it should be here said that the fact that the lease has been merged is often accepted without any direct evidence of intention—particularly where the buyer of the lease does not within a short space of time attempt to resell the lease of which he is the lessee.

Where the term of a lease is not more than 3 years it is usually called a tenancy agreement. A tenancy agreement may be under hand only—in fact is not required by law to be in writing at all, except where it is made by a tenant for life or by trustees or personal representatives.

A vexed question which often arises is whether a tenant is a weekly, monthly, quarterly, or yearly tenant. The mere fact that he pays his rent quarterly does not make him a quarterly tenant. If the premises are let at a yearly rent, notwithstanding that the rent is to be paid every week, it is a yearly tenancy. To make a tenancy a weekly, monthly, or quarterly one, the premises must be let at a weekly, monthly, or quarterly rent. So a week's notice is necessary to determine a weekly tenancy, a month's notice to determine a monthly

tenancy, and so on. A yearly tenancy may, however, be terminated by six months' notice.

Under the Increase of Rent and Mortgage Interest (Restrictions) Acts, to prevent landlords from increasing rents of small properties beyond certain permitted rates and prohibiting such landlords from demanding possession of such premises except for certain reasons such as non-payment of rent, tenants of small property who come within the scope of the Acts, i.e. "statutory" or "protected" tenants, have rights of retaining possession which are still unrepealed. This legislation is complicated and has been the subject of innumerable actions and judicial decisions. The solicitor's clerk is referred to the various handbooks on the Acts for the powers given to landlords and tenants under the Acts.

If the tenant fails to pay his rent, the landlord can "distrain" on the tenant's goods for such rent. This is done by instructing a certificated bailiff to seize the tenant's goods. The landlord can also apply to the Courts to recover possession of the premises, on the ground of non-payment of rent. In most cases the application can be made by writ of summons in the High Court—specially endorsed under Order 3, rule 6 of the Supreme Court Rules. Under this procedure, the plaintiff (landlord) can, if the defendant enters an appearance, apply under Order 14 of the Supreme Court Rules for summary judgment. As non-payment of rent is a good ground for an order to recover possession, the defendant has usually no good defence to the action, and judgment is obtained within 3 or 4 weeks of the proceedings being commenced.

Where the rental value of the premises, together

with any claim for arrears of rent does not exceed £100, proceedings to recover possession can be commenced in the County Court under sects. 138 or 139 of the County Courts Act. The summons is heard by the judge and the order for possession made by him. The advantage of a writ over County Court proceedings is that an order for possession is obtained with more expedition, and without any time being given to the tenant to vacate the premises.

Landlord and Tenant Act, 1927

By the Landlord and Tenant Act, 1927, tenants of business premises received statutory protection against what had previously been a long-felt grievance. The grievance was that a lessee or tenant might, by diligence and ability, build up a successful business and create a "goodwill" of value. This success might be achieved entirely by the efforts of the tenant. At the end of his tenancy, his landlord would reap the benefit of the tenant's industry and be enabled either to refuse to re-let to the tenant except at a much bigger rent or let the premises to a fresh tenant, who (on account of the valuable goodwill) would be prepared to pay the landlord a much bigger rent. The Landlord and Tenant Act, 1927, was enacted to prevent this abuse and gives power to the tenant to call upon his landlord either to renew his tenancy at a rent which is fair and equitable (and not dependent on the goodwill created by the tenant), or to pay the tenant reasonable compensation for his loss of goodwill. The Act has not been running long enough to test whether it effects its avowed object, but it has, at all events, prevented many cases of appropriation

by a landlord of the value of goodwill created by his tenant.

Agricultural Holdings Act, 1923

Somewhat the same form of protection as is furnished to tenants of business premises under the Landlord and Tenant Act, 1927, is given to farmers and agricultural tenants by the Agricultural Holdings Act, 1923. It is well known that farmers holding agricultural tenancies very often have improved the soil and cultural value of their holdings, and this Act provides that on quitting their farms they shall be paid reasonable compensation for such improvements.

CHAPTER VII

MORTGAGES AND CHARGES

THE astonishing rise of building societies within the last few years has brought a knowledge of mortgages to all of us. But a solicitor's clerk should possess more than a superficial knowledge of this subject.

The Law of Property Act, 1925, effected a radical change in the character of mortgages. Prior to the passing of the Act, a legal mortgagee of freehold property took the whole legal estate in the mortgaged property (i.e. became the legal owner), subject to the equitable right of the mortgagor to have the property reconveyed to him on paying off the mortgage. The new Act gave the mortgagee instead a term of 3,000 years in the land, subject to such term ceasing on the mortgage being redeemed. The legal estate in the property thus remains vested in the mortgagor.

In the case of leasehold property, the mortgagee instead of having the lease assigned to him was given by statute a sub-lease of the premises for the term of the lease less 10 days.

The solicitor's clerk will not in his early days concern himself very closely with the academic effect of this new legislation upon mortgages. He will be aware that a mortgage is a deed to secure payment of money lent on the security of freehold or leasehold property (although mortgages are not confined to freehold and leasehold property). If his firm acts for a bank, the bank will have its own printed form of mortgage which he will be asked

to use. Similarly, if his firm acts for a building society, such society will have a uniform printed form for use. And in other cases his firm will usually have a stock form of mortgage, or he will find one in a book of precedents, or can buy a form from any one of the principal law stationers.

In many cases the mortgage is arranged and carried through at the time the land or house is purchased. In such a case the title to the property is investigated once only for both purchase and mortgage. Where the same solicitor acts for the purchaser and the mortgagee, all that is necessary is to prepare and get the mortgagor (i.e. the purchaser) to execute the mortgage at the same time as he executes the conveyance or assignment (if such conveyance or assignment requires to be executed by him) and to send the deeds and mortgage (after stamping) to the mortgagee to retain until the mortgage is repaid. In passing it may be stated here that it is not usual to obtain the execution of a purchaser to a conveyance, unless the deed contains covenants on the part of the purchaser.

Where different solicitors act for the purchaser and the mortgagee, the purchaser's solicitor, on receiving from the vendor's solicitor the abstract of title, makes a copy and furnishes it to the mortgagee's solicitor. When examining the deeds, the purchaser's solicitor will invite the mortgagee's solicitor to attend with him to examine the deeds. When sending in requisitions on title the purchaser's solicitor will usually submit them to the mortgagee's solicitor for his concurrence and for any additional requisitions the mortgagee's solicitor may want to be added.

On obtaining the answers to requisitions, the purchaser's solicitor will send a copy to the mortgagee's solicitor to see if they satisfy the latter —particularly with reference to the questions specially raised by him thereon, and also to see if the mortgagee's solicitor requires to raise any further questions arising out of the answers. He also sends the mortgagee's solicitor the draft conveyance or assignment for his observations thereon.

The mortgagee's solicitor will attend the completion and bring the mortgage money with him. He will pay this over and take the title-deeds, the insurance policy, the assignment or conveyance (duly executed), and the mortgage executed by the purchaser. He will see that the mortgagee's name appears on the endorsement of the insurance policy, which he will himself send to the insurance company for them to note the changes of interest, and he will see that the purchaser-mortgagor pays his costs of the mortgage. If the conveyance or assignment has not been stamped with the appropriate conveyance duty stamp, the mortgagee's solicitor will either get the purchaser's solicitor to give him an undertaking to have same stamped and handed over to him within, say, 7 days, or else obtain the cash for the conveyance duty from the purchaser's solicitor and subsequently have the deed stamped himself.

Where the mortgage is on a property already owned by the proposed mortgagor, the whole business of investigating the title has to be gone through in the same way as on a purchase. The necessity for this must be apparent. No one should lend money on property without first inquiring

into the borrower's title to the property. In addition to an ordinary mortgage there are sometimes "second (or puisne) mortgages." It will be apparent that the lender will not often lend an amount equal to the full value of the land, but usually anything from 75 per cent to 80 per cent of the value. Thus, there is in such cases, a valuable interest in the property remaining—commonly and somewhat loosely termed the "equity." Should the property be worth £1,000 and the mortgage £750, there is an "equity" of £250 which will come to the mortgagor if the property is sold for £1,000. The borrower will sometimes find another person who will lend him, say, £100 or £150 on this "equity," taking the right to enforce repayment or recoupment of the loan—subject to the prior rights of the first mortgagee.

It is obvious that such a second mortgage does not give the lender the right to hold the deeds as security. These are already held by the first lender or first mortgagee.

To protect himself so as to ensure that he shall be repaid, the second mortgagee should do two things—

First, he should give the first mortgagee notice of his second mortgage. It is wise to do this by a formal notice addressed to the first mortgagee and to serve it on him or his solicitor, sending at the same time a duplicate of the notice for the first mortgagee, or his solicitor, to return endorsed with an acceptance of service. The first mortgagee is not bound to return this duplicate notice, but will usually do so as a matter of courtesy. The respective notices should then be attached to the mortgage deeds.

In addition to this, a second mortgagee should register his mortgage at H.M. Land Registry (Land Charges Dept.), Lincoln's Inn, W.C., under the Land Charges Act, 1925. The method of registration and the effect of it are dealt with in a separate chapter.

In addition to a formal or legal mortgage, there is also what is known as an "equitable mortgage." This is a mortgage not usually under seal and in somewhat looser terms than a legal mortgage. It is very often a more or less informal memorandum signed by the borrower, stating that a certain sum or sums of money have been advanced on certain specified property, the deeds of which have been deposited by the borrower with the lender as security. The great disadvantage of equitable charges is that the lender's remedy in case of default is very limited. If the lender's solicitor prepares the equitable charge he can overcome part of the difficulty by seeing that it contains an undertaking by the borrower to execute a legal mortgage when called upon to do so. Even this, however, is not free from subsequent difficulty should the mortgagee desire to enforce his security—as it will be necessary to institute proceedings to compel an unwilling mortgagor to execute a legal mortgage.

It is, therefore, advisable (but unusual) to have an equitable mortgage under seal (which will give the mortgagee power to sell the property in default of payment off—a power implied by statute) and also to insert in the document an "attornment clause" enabling the mortgagee to act as the attorney of the mortgagor to pass the legal estate in the property to a purchaser. This will enable

the mortgagee to give a purchaser a good legal title to the property. Without this provision, the equitable mortgagee cannot pass the legal estate to a purchaser, except under an Order of the Court.

If an equitable mortgage does not contain a clause giving power to the mortgagee to pass the legal estate, the mortgagee cannot take possession of the property or require that the rents be paid to him, without getting an Order of Court.

What happens when a mortgagor repays his mortgage? From the foregoing remarks about legal mortgages it will be gathered that some legal deed or document under seal is necessary to reconvey or re-assign the land to the mortgagor. Prior to the Law of Property Act, 1925, this was always so. The borrower in his mortgage conveyed the legal estate to the mortgagee and the same had to be reconveyed back to the mortgagor when he paid off the loan. The new form of conveyancing simplifies this very much by providing that in place of a formal reconveyance or reassignment, a simple receipt in the form indicated in the Act shall apply. The Act provides that such receipt shall give the name of the person making the repayment.[1]

This follows the lines set out in sect. 42 of the Building Societies Act, 1874, which provides that a receipt for the mortgage money endorsed on the mortgage shall operate to vacate the mortgage and vest the estate in the person entitled to the equity of redemption (i.e. the borrower or his successors) without any reconveyance or reassignment.[2]

[1] Law of Property Act, 1925, sect. 115, and Third Schedule.
[2] And see sect. 53 (1) of Friendly Societies Act, 1896.

The difficulty about building society mortgages is that there is now power to use either the form under the Building Societies Act, 1874, or the form under the Law of Property Act, 1925. Which should now be used? Many societies still use the 1874 form as it is the form set out in their rules. It would be better, however, to use the new form for various reasons, the most important being that it is more informative, giving the name of the person making the payment, and showing that certain legal consequences follow. Thus, when the receipt shows that the money has been paid by a person other than the borrower, then, unless it is otherwise mentioned in the receipt, the receipt is to operate as if the mortgage had been transferred to such person. A mortgage may be transferred from one mortgagee to another by a simple form of transfer which the solicitor's clerk will find in any of the usual books of precedents.

On payment off of a second mortgage the Land Charges Register should be vacated.

CHAPTER VIII

LAND REGISTRATION

SOME reference to land registration has already appeared in the opening pages of this book. The solicitor's clerk working in London or in Hastings or Eastbourne will necessarily have to acquaint himself with the Land Registry system, as these places are "compulsory areas," and the solicitor's clerk in other districts would do well to acquaint himself with the system, as he is almost bound to be concerned, sooner or later, with the transfer of "voluntarily" registered land, and may be faced with the compulsory extension of the system in the course of the next few years.

The object of land registration is to simplify the sale, purchase and mortgage of land. This is accomplished by the keeping (at the Land Registry in Lincoln's Inn Fields, London) of an official register of landed property and of the owners of such property. The scheme is based upon a special map or plan on which the various parcels of land are indicated with a title number. When land is first registered it is given a title number and a register is prepared showing (*a*) the description of the property, (*b*) the name of the proprietor, and (*c*) any charges or incumbrances thereon.

A certificate known as a Land Certificate (containing a copy of the register) is issued to the registered proprietor and takes the place of the title-deeds. Instead of an investigation of the title, the purchaser's solicitor can search the register, and in place of the formal conveyance or assignment

the property can be transferred by a simple form of transfer of the land, as simple in form as a transfer of shares. The land can be mortgaged or charged by a simple form of charge, and other dealings with the property can be registered with equal simplicity.

How does property first become registered? This is the first question the solicitor's clerk will ask. The answer is that practically all "first registrations" are effected on the occasion of a purchase of freehold or leasehold land. In the compulsory districts (County of London, Eastbourne, and Hastings), all persons purchasing freehold land or houses in such districts or purchasing leasehold property in such districts where the lease has 40 years to run or taking up leases in these areas for a term of 40 years or more have to apply to H.M. Land Registry for registration of their title. If they do not apply within 2 months of acquiring the property, their conveyance or assignment or lease is void (as regards the legal estate in the land).

Registration has been compulsory in London since about 1900. There are, therefore, a very great number of titles already registered. Eastbourne and Hastings are comparatively new to compulsory registration, Eastbourne entering the scene on 1st January, 1926, and Hastings on 1st January, 1929.

The application for first registration is a simple matter. The solicitor's clerk will fill up a special form of application for registration on a printed form which can be bought at any law stationers. The form states (*inter alia*) that the applicant's solicitors acted for the purchaser and investigated the title in the usual way and that as the result of such investigation the conveyance or assignment

validly conveyed the legal interest in the property to the purchaser. He will then make up a parcel composed of (1) the title-deeds of the property, (2) the contract for sale, (3) the abstract of title, (4) the requisitions on title and answers, (5) counsel's opinion on the title (if any), (6) certificates of searches for land charges and local land charges, and (7) the conveyance or assignment or lease (together with a copy typed or written on good foolscap paper and certified to be a true copy). If there is a mortgage, the mortgage and a certified copy thereof should be included in the parcel.

When these documents are lodged at the Land Registry and the fees paid, the Land Registry peruses the deeds and abstract and in due course returns the deeds to the applicant's solicitors with a land certificate, containing a copy of the entries which have been made on the register, viz. a description of the land, the name of the proprietor, and particulars of the charges on the property.

The Land Registry, if fully satisfied as to the applicant's title to the land offered for registration, will grant to the applicant what is known as an absolute title, the highest form of title it can give. By an absolute title the Land Registry indicates that it is sufficiently satisfied with the title officially to guarantee its ownership. In the case of leasehold property, an absolute title is only granted where both the lessor's and lessee's titles have been examined and the Land Registry is satisfied that the owner of the superior title was the person entitled to grant the lease. Where the lessor's title has not been examined, the Land Registry will grant to a lessee a good leasehold title. By this the Land Registry is able to guarantee the lessee's title

as lessee—but is unable to guarantee that the lessor has any right to grant the lease.

Where the Land Registry does not for any purpose grant an absolute or good leasehold title, it grants what is known as a possessory title. In the case of a possessory title the Land Registry does not guarantee that the first proprietor was the proper legal owner of the property, but it guarantees that all subsequent proprietors correctly acquired their land from such first proprietor.

A large number of possessory titles have been granted in the past because solicitors demanded possessory titles instead of absolute titles. These are gradually being converted into absolute or good leasehold titles, partly on applications by the registered proprietors and partly at the instance of the Registry itself.

The change of ownership of registered property on a sale is effected by a form of transfer. This takes the place of the conveyance or assignment usual on the sale of an unregistered property. It is a simple form, which merely states that in consideration of a stated sum (the purchase money), A. B., the registered proprietor of the land transfers to C. D. (the purchaser) the land comprised in the registered title. The transfer is executed like a conveyance, and stamp duty (conveyance duty) has to be paid on the transaction. The transfer is then lodged by the purchaser's solicitor at the Land Registry and the Land Registry fees paid. The Land Registry then makes an entry of the change of ownership of the land on the register and on the land certificate copy of such register and returns the land certificate to the applicant.

Where the transfer is part of the land in the title,

it is necessary to attach to the transfer a plan showing the part transferred (either edged in red or coloured pink) and such plan must be signed by the vendor and by the purchaser or their solicitors. Where the part transferred is a whole house and garden or has the boundaries defined, it can be transferred by reference to a number on the Land Registry General Map. To obtain this it is necessary to ask the Land Registry for a general map reference, stating the property sought to be transferred and giving sufficient particulars to enable the property to be identified.

Where a title contains two or three houses (or more) and the whole is sold by separate transactions, it is wrong to use a form of transfer of part in every case; one of such transfers should be a transfer of the whole. The reason for this is soon clear. When various parts of the title have been transferred out—what is left—even if it is a mere strip of land—is the whole (residue) remaining on the title. A transfer of this residue is a transfer of the whole land (the whole land remaining on the title).

Where the sale is by executors or administrators of deceased owners, the probate or letters of administration should be lodged at the Land Registry with the transfer.. Similarly, when the transfer is to a limited company a copy of the memorandum and articles of association should be lodged.

Charges or mortgages of registered land are effected either by a Land Registry charge (which is simple in character and implies all the usual mortgage covenants without expressing them in the charge) or by a mortgage in any legal form (so long as the property is described by reference to the

title number or given a description sufficient to identify it) or by a building society mortgage.

The charge is, after execution, stamped with mortgage stamp duty and lodged for registration at the Land Registry, who will enter particulars thereof in the charges register. The land certificate must be lodged and also a copy of the charge.

The benefit of the charge can be transferred by a simple instrument of transfer of charge and the charge can be discharged by a form of discharge signed by the mortgagee.

A charge by a limited company has to be lodged for registration at the Companies' Registration Office, Somerset House, before it can be registered at the Land Registry.

When a registered proprietor dies the executors or administrators can be registered as personal representatives of the deceased on their solicitor lodging at the Land Registry the land certificate and the probate or letters of administration and filling up a simple form of application. The solicitor has to certify on the form the value of the land, so that the appropriate Land Registry fees can be ascertained. When registering executors or administrators as proprietors, the Land Registry puts an entry on the charges register that the land is subject to any death duties arising by reason of the death of the registered proprietor. If the applicant obtains a certificate from Somerset House that the property is not liable to death duties (Land Registry Form, No. 61) and lodges it at the Land Registry, the entry above referred to will not be made on the charges register—or if already made, will be cancelled. Of course, if the deceased proprietor was not the legal owner—but a trustee

—the above certificate is not applicable. The applicant's solicitor should in such cases furnish the Land Registry with evidence—a letter certifying the facts is usually sufficient—that the deceased was a trustee.

If the land is held by two or more joint proprietors, one of whom dies, the other should apply to have the deceased holder's name removed from the register. This is done by lodging the land certificate at the Land Registry with either the probate or letters of administration or a death certificate and filling up a form of application to register the death.

When the registered land is bequeathed to some beneficiary named in a will, or where a residuary legatee is given the registered property as part of his or her share in the estate of the deceased, the executor can transfer the property to such beneficiary by a form of assent, or may assent to the residuary legatee appropriating the registered property. The assents have to be signed by all the executors and the probate must be produced on the registration—unless the executors are already on the register.

It often happens that a person owning a leasehold property is able to acquire the freehold of his land and merge (or extinguish) his lease. It does not, of course, follow that the lease merges—as the proprietor can keep it alive if he so desires (he may, for example, want to resell the freehold—or to sell his lease and keep the freehold). In many instances, however, the proprietor will desire to merge his lease. This will occur in the following cases—where both interests are registered, where the freehold only is registered, where the leasehold

is registered without the freehold, and where neither interest is registered.

Where both interests are registered the leasehold land certificate will be cancelled and the leasehold register closed, while any entry respecting the lease which appears in the freehold register will be cancelled.

In some instances where the leasehold title is only a possessory title, the Land Registry will require to see the deeds of the property—but usually it is sufficient to lodge the lease and counterpart, which will be returned after the registration, marked "Lease Determined. Register Closed."

If the freehold title only is registered the applicant lodges his land certificate and all his leasehold deeds. The Land Registry will then cancel the entry of the lease in the freehold register.

If the leasehold is registered, but the freehold is not, the applicant should apply for first registration of the freehold and in his application form state that he owns the leasehold and that it has now merged. He will lodge all his deeds and the leasehold land certificate. The Land Registry will issue a land certificate of the freehold property without any mention of the lease and will cancel the leasehold land certificate and close the leasehold title.

If neither titles are registered, the procedure is simple. In applying for registration of the freehold the applicant will state that the lease has merged and he will pay registration fees on the full value of the property—as a freehold unencumbered by any lease.

It has previously been mentioned that many properties on the register are only possessory titles, although the present policy of the Land Registry

is to grant absolute or good leasehold titles in every possible case. It is an advantage to convert such possessory titles into absolute or good leasehold wherever possible as it avoids investigating the title to the property. The Land Registry welcomes such applications.

It is usual to apply for conversion when lodging a transfer on sale for registration. By doing this, the applicant avoids having to pay a fee for conversion. The applicant lodges all his title deeds and the Land Registry investigates the title just as in the case of a first registration.

In some instances (the exceptions being possessory titles registered before 1st January, 1909) the applicant can, at the expiration of 10 years (leasehold) or 15 years (freehold) from the date of first registration apply for conversion without producing any title deeds. The reason for excepting titles registered before 1909 from this privilege is that earlier titles were accepted for registration as possessory titles without proper investigation of the title.

A very popular feature of land registration is the notice of deposit. This is often adopted when a borrower deposits his land certificate with someone as security for a loan and no formal charge has been registered. To secure the matter the lender can fill up a form of notice of deposit (in duplicate) and register it at the Land Registry. The Land Registry keeps one part and returns the other to the applicant and enters a note of the memorandum in the charges register. It is not necessary for the land certificate to be produced at the Land Registry—but if it is lodged—it is made to correspond with the register. Only one notice of deposit

can be entered—as must be obvious from the nature of the notice itself and no notice of deposit can be registered while there is a charge registered (except a notice of deposit of such charge certificate).

The notice of deposit can be withdrawn by a simple form of withdrawal. The Land Registry is, however, particular to see that the person signing the withdrawal is the person in whose favour the notice of deposit was registered.

Where a transfer of a title is lodged for registration and it is found that a notice of deposit appears on the register, the Land Registry will warn it off, i.e. give notice to the person putting on the notice of deposit that unless they come forward and substantiate their claim, the entry of the notice of deposit will be cancelled.

Anyone claiming to have an interest in any land, whether registered or unregistered, can lodge a caution against such property being registered—or if registered—being dealt with. There are separate forms of caution applicable for use in case of unregistered or registered land. The caution of unregistered land must contain a short description of the property. Every application for a caution must be accompanied by a statutory declaration made by the cautioner or his solicitor verifying the right of the cautioner to lodge his caution. A caution can be cancelled by a simple form.

The question which a solicitor's clerk is bound to ask in connection with registered land is how one investigates the title to a registered property. The answer is, of course, that the register itself is the title to the property (in the case of an absolute or good leasehold title at all events) and the only

investigation necessary is an inspection of the register. In this connection it should be remembered that it is not sufficient to peruse the land certificate in the vendor's possession, as the copy register stitched up in the land certificate may not be up to date. There may be entries on the register which do not appear on the land certificate, such as notices of deposit, cautions, or bankruptcy petitions.

It is the duty of the purchaser's solicitor to search the register at the Land Registry to see whether any entry has been made since the land or charge certificate was last made to agree or correspond with the register. He can only search the register on obtaining an authority from the registered proprietor or his solicitor for this purpose.

Up to 1930 large numbers of solicitors were accustomed to attend personally at the Land Registry to search the registers. There was an obvious flaw in this method of search. Solicitors felt bound to leave their searching until within an hour or two of completing the purchase of registered land, instead of searching at their leisure and in comfort. Even with this eleventh hour searching, no solicitor could be certain that some entry would not creep in between the time of search and the completion. The matter gave much cause for anxious thought on the part of those interested in land registration, and at length, as the result of evidence given before Lord Tomlin's Committee in 1929, a new search form (Form 94) was evolved which conferred a priority of registration. A prospective purchaser fills in this form and sends it to the Land Registry by post, and the Land Registry returns it with either a certificate that no fresh entries have been

made on the register since the land certificate was last brought up to date, or else gives details of such fresh entries.

Where an official certificate of this kind has been obtained by a purchaser, any entry made after the date of the certificate and before an application for registration is made by the person to whom the search certificate has been issued will be postponed to the latter application, provided only that the searcher's application is in order and is lodged at the Land Registry before the third day after the date of the certificate.

The object and result of this is that a prospective purchaser can search the title by post at any time not more than 3 days before the date of his proposed completion and by so searching obtain a priority over any application made during the period intervening between his search and the completion. The search is entirely free of charge and frees the searching solicitor from all responsibility for error or omission.

There is little more to be said about registered land. There is, however, one question which a solicitor's clerk may well ask. What happens if you lose your land certificate? The question can be quickly answered. The owner of the lost land certificate should apply for a new one.

The applicant should put his request in the form of a letter addressed to the Chief Land Registrar. It must be signed by the registered proprietor, and be accompanied by a statutory declaration by some person who can speak as to the facts and set out in detail all the information necessary to explain the loss of the certificate and stating what efforts have been made to find it. The declaration

should state positively that the certificate has not been deposited or dealt with except as may appear on the register. In other words, the declaration must satisfy H.M. Land Registry that the land certificate has been genuinely lost or destroyed.

The Land Registry will advertise the loss in a local newspaper (at the cost of the applicant), and if the land certificate cannot be traced within a reasonable period, will issue a new certificate to the registered proprietor.

Sometimes the Land Registry will call upon the applicant to execute a bond to indemnify the Land Registry Insurance Fund against any loss they may sustain, before they will issue the new land certificate.

It should be borne in mind that in practically every case of a transfer or charge of the land it is necessary to produce the land certificate to the Land Registry. Where, therefore, a land certificate has been lost, no dealing can be accepted for registration until a fresh certificate has been obtained.

It is obvious that in time a register would contain innumerable cancelled entries relating to past transfers, etc. This difficulty has been got over by the Land Registry issuing fresh editions of the register from time to time—omitting all cancelled entries, "clearing the registers" as it is called. Many land certificates, therefore, contain only current entries—showing at a glance the present state of the register.

Where a transfer has been executed by an attorney under a power of attorney, the Land Registry will require proof that the principal is still alive and that the power is a valid power.

It is usual for the Land Registry to retain the power of attorney for filing with the papers relating to the application, but a solicitor can, if he so desires, file the power at the Central Office, Royal Courts of Justice, and obtain an office copy for the use of the Land Registry.

The system of land registration is rapidly spreading and it behoves the solicitor's clerk to familiarize himself with its methods of working, so as to ensure that in the event of compulsory registration increasing its bounds he has some knowledge of the subject.

CHAPTER IX

REGISTRATION OF DEEDS

In addition to the compulsory registration of land in the County of London and the County Boroughs of Eastbourne and Hastings, there are, as previously stated, deeds registries for the County of Middlesex and for the three Ridings of Yorkshire. These registries have been in existence since the reign of Queen Anne and—it should be emphasised—are *deeds* registries, not registries of titles. The Middlesex Registry is now limited to that part of the County of Middlesex which is outside the County of London (i.e. outside the area now covered by the compulsory powers of the Land Registration Act, 1925).

The effect of failing to register a deed is that such deed becomes void on the property being subsequently conveyed by the owner of the unregistered deed. This is to put a purchaser on his guard to see that before he completes his purchase the vendor has registered the previous conveyance.

In addition to conveyances, assignments and mortgages, all probates and letters of administration affecting land in the County of Middlesex have to be registered at the Middlesex Registry. So also do *puisne* (or second) mortgages. Where there is a second mortgage affecting land in the County of Middlesex (outside the County of London) it has to be registered in the Middlesex Registry, and need not, in fact should not, be registered at the Land Charges Registry.

The Middlesex Deeds Registry is kept at H.M.

Land Registry in Lincoln's Inn Fields as a separate Government Department, but under the control of the Chief Land Registrar.

The method of registration is by a memorial of the deed offered for registration. This is prepared on a form, copies of which can be obtained of the principal law stationers. It is of a certain uniform size so that it can be bound up with other memorials in a book or file specially provided.

It nominally takes the form of a short abstract or epitome of the deed confined to the date of and parties to the deed and a description of the property affected. It is found most convenient, however, to type a copy of the deed on a special form of memorial provided for applicants who desire to register a full copy of the deed. If there is a plan on the deed, a tracing on linen should be furnished to the registry when presenting the deed for registration. A fee of 2s. 6d. is charged for the registration of each deed presented—in addition to which an Inland Revenue duty stamp of 2s. 6d. or such lesser amount as has been paid on the deed for conveyance duty has to be paid.

The applicant presents his deed and the stamped memorial to the appropriate officer of the Middlesex Registry and fills up a form of receipt for the officer to stamp and hand to him.

The memorial and the deed are kept at the Middlesex Registry about 3 days, after which the memorial is retained in the registry and the deed is returned to the applicant, duly marked with a rubber stamp to indicate that the deed has been duly registered.

Where a mortgage (which has been registered at the Middlesex Registry) is paid off it is not

necessary to prepare a memorial of the statutory receipt. The receipt itself is produced to the registry officials, who enter a memorandum on the memorial of the mortgage and in the index that such mortgage has been satisfied. The paid off mortgage is kept in the Middlesex Registry while this is being done. A statement that such satisfaction has been entered is marked on the mortgage with a rubber stamp.

A search in the Middlesex Registry should be made before a completion to ensure that the vendor has not sold or mortgaged his land to someone else. The search is made against the name of the vendor or mortgagor as the last person to be registered. If, on examining the abstract of title, it is discovered that the vendor or mortgagor has not registered, it should be seen that he takes the necessary steps to put his deed on the register. If he prefers to apply for registration under the Land Registration Act, 1925, there will be no need to register the deed in Middlesex.[1]

Up to recent years searches in Middlesex were cumbersome, involving the perusal of large quarterly indexes containing proprietors' names. This is now greatly simplified by the use of loose leaf indexes arranged lexicographically and enabling the searcher to turn at once to the exact surname he requires to search.

On finding any reference to the name searched against, the applicant should make a note of the reference—such as 1931, B.3, No. 472, and take his search form to the room where the memorials are kept. He will there be able to inspect the

[1] As a result of the Report of Lord Tomlin's Land Transfer Committee (January, 1935) the Government is proposing to abolish the Middlesex Registry in 1936, and to make the County of Middlesex a compulsory area under the Land Registration Act, 1925.

original memorial and satisfy himself as to whether it affects the property against which he is searching.

The Yorkshire Registries

The three Yorkshire Registries function under the Yorkshire Registries Act, 1884 (which consolidated the earlier Acts of Parliament). They were established about the same time as the Middlesex Registry was founded.

There are three registries—

The North Riding Registry at Northallerton;
The East Riding Registry at Beverley; and
The West Riding Registry at Wakefield.

All "assurances" of land in Yorkshire have to be registered at the Registry of the Riding in which such land is situate.

An "assurance" (sect. 3 of the Yorkshire Registries Act, 1884) includes a conveyance, a memorandum of charge, a statutory receipt, and other less well-known dispositions—such as a Private Act of Parliament. A will affecting land in Yorkshire, including a codicil or letters of administration with the will annexed may be registered, but such registration is not compulsory.

The effect of registration of an "assurance" is to give it priority according to the date of registration. It is, therefore, desirable to present a deed for registration as soon as possible after execution to ensure due priority over subsequently executed deeds.

The registration is effected by lodging the deed at the appropriate registry accompanied by a memorial of the deed on a special printed form. These forms are printed bookwise with a wide margin for binding (which must not be written on). "Followers"

(i.e. additional sheets of the same size, shape and quality of paper) can be added where necessary.

The documents can be sent by post addressed to the Registrar of Deeds, Northallerton, Yorks (or Beverley, or Wakefield) with a remittance for the appropriate fees and a stamped addressed envelope for the return of the deed. It is unnecessary to attend at the registries in person. Plans which form part of a memorial must be copied, or tracings on tracing linen, not smaller than the memorial form. The fees for registration are—West Riding 7s. 6d., the other two Ridings 5s.

A feature of the Yorkshire Registries is that one can register a caveat. The caveat is lodged with a memorial and a fee of 2s. is paid for such registration.

Anyone can search the registers on paying a search fee (1s. for any period not exceeding 10 years) on any day the registries are open for business—i.e. the usual hours of public offices. They can see the memorials and take copies or extracts from same (in lead pencil).

Where an official search is required (which is imperative if the applicant is not resident or in business at a place near to the Registry Office of the Riding in question), the same will be made by the Registrar and a certificate of the result thereof issued. Fee 7s. 6d. for each name for a period of 10 years.

Copies of the memorials and any other documents filed can be obtained for 4d. a folio, plus 2d. a folio if the copies are required to be certified as true copies. The cost of a copy of a map or plan will vary from 2s. to £2 2s. according to the labour involved in making such copy.

CHAPTER X

LAND CHARGES

FOR many years prior to 1925 there had been a Land Charges Registry, but it is only since the Land Charges Act, 1925, that it has assumed its present importance. The land charges as registered before 1925 were in respect of deeds of arrangement, judgments or orders affecting land and other matters which, while they affected land, so seldom arose that only a small proportion of solicitors ever troubled to search for them. Even those who did search did so more or less as a matter of course, and seldom, if ever, found any entry affecting their title.

The Land Charges Act, 1925, turned this unimportant register into one of the utmost importance to ordinary (i.e. unregistered) conveyancing. In the protagonism between land registration and ordinary conveyancing, the land registration enthusiast was able to point with pride to the fact that all charges and incumbrances affecting a registered title appeared on the title, whereas in ordinary (i.e. unregistered) conveyancing, there might be—in addition to the charges and incumbrances disclosed by the title deeds—a whole series of incumbrances and liabilities affecting the land (not disclosed by the deeds) which were binding on a purchaser.

These charges might not only be of an onerous character, they might even defeat the purpose for which the purchaser bought the land, or invalidate the sale altogether, and these liabilities might still

exist although the purchaser was able to prove that he bought his land in good faith and without any knowledge of such charges. For example, the land might have been seized by a judgment creditor to enforce a judgment debt, or the vendor might be a bankrupt. There might be annuities, or Orders of Court affecting the land or restrictive covenants not disclosed by the deeds. These things would not appear on the abstract of title, yet they might result in the purchaser being dispossessed of his land or even if he remained in possession, being saddled with liabilities which he had never anticipated and which, had he been aware of them, would have persuaded him not to buy.

The object, therefore, of the Land Charges Act, 1925, is to protect purchasers by compelling the registration of these incumbrances and enacts that unless these charges are in fact registered they should be void against any purchaser. The purchaser could thus, by searching the land charges register, ascertain before completion what incumbrances not appearing in the abstract of title the land was subject to.

The Land Charges Act, 1925, prescribes the registration of various charges and liabilities affecting land, including contracts for sale, *puisne* mortgages and restrictive covenants. It was intended by the Act that the whole field of encumbrances on land not already revealed in the abstract of title or disclosed by inspection of the property or enquiry of the occupier must be registered.

There are two or three exceptions to the general principle laid down in the previous paragraph, viz.—

(*a*) In the case of a land charge to secure money

created by a limited company, the charge is registrable at the Companies Registration Office, Somerset House, Strand, W.C., instead of at the Land Charges Registry.

(*b*) If the land is situate in Yorkshire, an equitable charge, restrictive covenant, equitable easement or estate contract should be registered at the local deeds registry.

(*c*) If the charge is a local land charge (i.e. a charge acquired by a local authority under an Act of Parliament (as for example for road charges)) the charge should be registered with the local authority.

The registration under the Land Charges Act, 1925, is in the nature only of notice to a purchaser of certain alleged charges or liabilities. The officials of the registry do not inquire into the validity of the alleged charges or incumbrances: they have no means of checking the correctness or otherwise of the particulars given on the application forms. A purchaser, searching at the registry and obtaining particulars of these charges and incumbrances, must make such further enquiries of his vendor as he may find necessary.

The Land Charges Register—it should be emphasised—is not a registration of land, but of names. The entries are made under the names of estate owners against whom notices of alleged charges or incumbrances are registered. One cannot, therefore, search respecting a particular piece of land, but only against the names of the estate owners revealed by the abstract of title, and if the abstract fails to disclose the names of the persons against whom search should be made, the registers are of no assistance in tracing them.

The following land charges are registrable under the Land Charges Act, 1925—

(*a*) Pending actions.
(*b*) Annuities.
(*c*) Writs and orders affecting land.
(*d*) Deeds of arrangement affecting land.

(The above were the registers already existing when the Land Charges Act, 1925, came into force.)

(*e*) Land Charges—

Classes A and B. Rent or annuity, being a charge created under an Act of Parliament.

Class C (i). A legal mortgage not protected by a deposit of deeds (a "puisne" mortgage); and—

(ii) An equitable charge acquired by a tenant for life in respect of death duties paid by him (a "limited owner's" charge);

(iii) Any other equitable charge not secured by a deposit of deeds (a "general equitable" charge);

(iv) A contract for sale or conferring an option to purchaser (an "estate contract").

Class D (i). A charge acquired by the Inland Revenue for death duties;

(ii) A restrictive covenant created after 1925;

(iii) An easement over or affecting land created after 1925.

Class E. An annuity created before 1926 and not previously registered.

Registration is effected by filling up the appropriate form of application and lodging same at the registry. The form sets out the nature of the charge and the date of its creation and describes

shortly the land affected, the name of the estate owner and the name, address, and description of the person (if any) in whose favour the land charge was created. A registration number is given to the applicant, of which he must keep a note, as no receipt or acknowledgment is given for the particulars. (If he wishes, he can obtain an office copy of the particulars.) It is not necessary to produce the deed evidencing the charge. The application may be made by the solicitor for the applicant and if not made by a solicitor it has to be supported by a statutory declaration in a special form.

Where a land charge is discharged, the registration can be cancelled by filling up a form of application (Form L.C. 8), setting out the reason for the cancellation. If the discharge is by cesser, or with the consent of the person entitled to the charge, a form of acknowledgment of satisfaction (Form L.C. 10) must also be registered.

It is now (since the Land Charges Act, 1925), imperative on any purchaser of land to search against the name of the vendor for any land charges. This is done by filling up (in duplicate) a simple application form (Form L.C. 11) asking for a search of the alphabetical indexes for subsisting entries against the vendor. This is sent to the Land Charges Registry with a search fee and is returned to the applicant the day after delivery to the registry (or on the date specified on the form), with a certificate of the result of such search—such as "No subsisting entries registered" or setting out the particulars of any entries—taken from the indexes. If there are any entries, the applicant can either see the original application for registration at the registry or obtain an office copy.

If a search is required in a hurry, the result may on application be telegraphed or telephoned by the registry to the applicant on payment of an additional fee.

In addition to the (Central) Land Charges Registry, the Land Charges Act, 1925, provides for the creation of local registries by every County Council, Borough Council or other local authority, for the registration of charges acquired by such local authority under their statutory powers (such as, for example, a town planning scheme, a charge for paving charges, etc.).

It is, therefore, necessary for a prospective purchaser not only to search for central land charges, but also for local land charges. An application form, similar to the one already mentioned in this chapter, is filled up in duplicate and sent to the registrar of the local authority, with the appropriate registration fee. The search form (or rather the duplicate) is returned with a certificate of the result of the search endorsed. If further information is required as to any entry disclosed by the search, it can be obtained by correspondence with the local registrar, on payment of further search fees and payment for any copies required of the documents registered.

The remarks made in this chapter as to the necessity of searching on the part of a purchaser apply with equal emphasis to a mortgagee. Thus, a mortgagee should always search both registers before completing a mortgage transaction, unless the mortgage is being completed contemporaneously with the purchase, when there is no object in the mortgagee searching against the mortgagor (i.e. the purchaser), but he should see that proper

search certificates against his mortgagor's vendor are handed over. Search certificates should always be placed with the title-deeds and handed over on each transaction as part of the documents of title.

CHAPTER XI

LIMITED COMPANIES

SOONER or later the solicitor's clerk will be asked to prepare the necessary papers to incorporate a company. A firm of clients or an individual client will decide to turn their or his business into a limited company, or to acquire a business from someone else—or will desire to start a fresh venture, and will instruct the solicitor to take the necessary steps for such a company to be registered.

The object of turning a business into a limited company is to limit the liability of each shareholder to the actual amount of the shares held by such shareholder. Thus, if the shareholder has paid up 10s. out of the £ due on his shares he is only liable to pay up the remaining 10s. per share—and if he has fully paid for his shares he is not liable for any of the debts of the company (except that payment of the debts of the company will come before payment of any monies to him on the company being wound up).

The first thing to do in obtaining instructions is to get the following particulars from the client—

1. What is the proposed company to be named?
2. What is the nature of the business to be carried on?
3. From whom is the business to be acquired?
4. What is the price to be paid for the business?

(Even in the case of a private individual turning his business into a limited company, it is necessary to have an agreement to sell the business to the

proposed company, and a purchase price should be named.)

5. What is the proposed nominal capital of the company?

6. How much of this is to be issued now?

7. Who are to be the directors?

8. Where is the registered office of the company to be situate?

9. Whether the company is to be a public or private company.

Having obtained these particulars from the client, the next thing to do is to inquire of the Companies Registration Office, Somerset House, W.C., whether the proposed name of the company is available for registration. This should be done by letter if possible, so as to obtain a written reply and avoid misunderstanding.

The reason for inquiring as to the name of the company being registrable, is that duplication of names is not permitted. It must be obvious that to permit the registration of a new company with a name similar to that of an existing company would lead to confusion, and care is taken by the authorities to ensure that such duplication is avoided. Even where the proposed name is a continuation of the private name of the firm—as "John Smith & Co., Limited," duplication is not allowed, and such a firm would be asked to describe themselves as "John Smith & Company (Booksellers) Limited" or John Smith & Company (Wigan) Limited" or some other such name as will prevent duplication with the original and first registered company who were able to claim to be registered under the name of John Smith & Company Limited.

Where a proposed company is to take the name and take over the business of a company which has been wound up or dissolved, it is usual to incorporate a date in the title of the new company—as for example, John Smith & Company (1932) Limited.

The clerk will now set to work to prepare the necessary papers to incorporate the company. If it is a small company the matter does not present much difficulty, but if it is a large or important company, and especially if it is a public company (i.e. a company which is going to issue a prospectus and invite the public to subscribe for shares) he had better consult his principal at the outset and work only under his direct supervision. The floating of public companies has become in recent times a matter of such grave responsibility to solicitors and accountants that the utmost care and diligence should be exercised to see that the public is not misled over the slightest detail.

A private company is a company which, by its articles of association restricts the right to transfer its shares, limits its membership to 50 shareholders (exclusive of persons employed in the company's business—and those who, being previously employed in the business still retain their membership and shares, although no longer in the company's service), and expressly prohibits any invitation to the public to subscribe for shares.

A private company only requires two subscribers to its memorandum of association (a public company requires seven).

The first and most important document is the memorandum and articles of association. This is in fact, two separate documents, the memorandum of association and the articles of association, and is

bound up in one cover for convenience. The memorandum is in effect the charter of the company, setting out its objects. The articles are the rules of the company, setting out the powers of the directors, the rules for calling and holding meetings, the transmission of shares, and generally, how the company is to be carried on. Both these documents are (almost invariably) printed, and a copy —signed by the first shareholders (i.e. the "subscribers" as they are termed)—is filed at the Companies Registration Office, Somerset House, W.C.

The memorandum is a rather curious document. It sets out not only the actual object for which the company is formed—as for example boot manufacturing—but all objects which the company might conceivably desire to carry on in conjunction with the principal business, as for example boot retailing, leather dealing, tanning, bootlace manufacturing and retailing, shoe polish manufacturing and retailing, rubber manufacturing and selling, etc., etc. In fact, it is a matter delightful to an ingenious draftsman so to amplify the objects of a company that it covers every conceivable line of business the company may at any time desire to carry on. The reason for this is, of course, that the company cannot carry on any business outside the objects disclosed in the memorandum of association. If a company wishes to go outside its objects, it must have its memorandum amended to cover the new objects.

The articles of association—apparently a formidable document—actually need present little difficulty. There is, fortunately, a statutory form of articles of association, known as "Table A," which

provides for nearly every contingency an ordinary company will meet, and the applicant for registration can incorporate any part of this statutory form in his articles of association by merely putting in his articles a paragraph that "Articles 2 to 54 and 67, 69 and 71 in Table A to the Companies Act, 1929 shall be deemed to be incorporated in these articles." (The above numbers are, of course, illustrative and have no reference to any particular article in Table A.)

It is not generally known that a public company can be incorporated without any articles of association at all. The company can adopt "Table A" (in the First Schedule to the Companies' Act, 1929), endorsing the memorandum of association "To be registered without articles." A private company cannot do this (i.e. adopt Table A in its entirety), but as before mentioned, it can use a very short form of articles adopting Table A with modifications, but specially restricting the transfer of shares, limiting the membership of the company to 50 (exclusive of persons in the employment of the company) and prohibiting any invitation to the public to subscribe for shares.

In the case of many small private companies, the expense of registration does not permit a very careful consideration of the powers to be inserted in the articles and it is often found desirable to make use of a stock form such as can be purchased from some of the principal law stationers. These forms are kept standing in type and where they are used with a minimum of alteration the cost of printing is considerably reduced.

The name of the company having been accepted and the proof print of the memorandum and

articles obtained, the solicitor's clerk will now obtain and fill up the following very simple forms—

1. Statement of the nominal capital.
2. Notice of situation of registered office.
3. Declaration of compliance.

The declaration of compliance is a printed form of statutory declaration to be made by the solicitor engaged in the incorporation of the company (the declarant *must* be a solicitor) that the statutory requirements on application for incorporation have been complied with.

The clients will now be asked to attend to sign the memorandum and articles, the statement of nominal capital and the notice of situation of the registered office. It is only necessary to have two subscribers to the memorandum and articles and for each of them to subscribe for one share in the company. The actual allotment of shares can follow on later. One of the clients should sign the statement of nominal capital and the notice of situation of registered office as a director or secretary of the company and after this has been done the solicitor should attend before a commissioner for oaths to make his declaration.

The client should give the solicitor a cheque for the registration fees. These, which vary according to the amount of nominal capital, include Government Duty (Companies' Capital Duty) at 10s. per £100 of nominal capital, registration fees ranging from £2 for a £100 company to £16 15s. for a £50,000 company, two deed stamps of 10s. each on the memorandum and articles of association and three filing fees of 5s. each.

The papers are lodged at the Companies' Registration Office, Somerset House, for perusal—it is

usual for about two days to elapse before further inquiry is made—and if in order the papers are filed and the fees paid and in due course (another 4 or 5 days) a certificate of incorporation is obtained from the Companies Registration Office. This is the outward proof that the company has been incorporated. It is usual to have this framed in a plain oak frame and hung in a conspicuous place in the company's registered office.

The company has now been formed, but there are many preliminaries to be undertaken before the solicitor can wash his hands of the matter.

Various requirements for the new company should be ordered. There should be a book of share certificates with the name of the company printed in (with particulars of the nominal capital), a share register, a minute Book and an impressed seal, having the name of the company thereon. When these have all been obtained, a meeting of the company should be arranged to appoint directors and secretary, bankers, solicitors and accountants, allot the shares, seal the sale agreement to the company (if any) and generally inaugurate the company.

It is usual to have a duplicate of the sale agreement sealed as in some instances—as where the projected agreement is referred to in the memorandum and articles of association—it is usual to file the agreement at the Companies Registration Office.

The shares having been allotted and the directors appointed, the solicitor for the company will fill up a form of return of allotments and a form of particulars of directors (which forms he will get signed by a director or the secretary of the company and will file at the Companies Registration Office within 14 days of the meeting). The secretary of the

company can now fill up the necessary share certificates and after signature and sealing they can be issued to the shareholders.

Where it is desired to incorporate a public company, it is necessary to file in addition to the papers required on registration of a private company—the following further forms—

1. Consent of proposed directors to act (a public company must have at least two directors).
2. List of directors who have consented.
3. Contract by directors to take and pay for the shares which form their qualification (under the articles) to become such directors (except where such directors have already subscribed for the qualifying number of shares on signing the memorandum of association).

The memorandum of association has to be signed by not less than seven subscribers.

Before a public company can commence business it must obtain a certificate that it is entitled to commence. To do this it must file its prospectus or a statement in lieu of prospectus. It is no part of this work to go into the intricate nature of a prospectus, although the solicitor's clerk will be familiar with them from seeing them in his daily newspaper. The preparation of a prospectus is a matter requiring most careful consideration and consultation between the promoters and their solicitors and accountants, and the utmost care should be taken to see that it complies with sects. 34 and 35 of the Companies Act, 1929.

When printed, a copy of the prospectus, dated and signed by all the directors must be filed at the Companies Registration Office on or before the date of its publication. It is best to put a date

about a week ahead on the copy prospectus filed, as the same has to be examined and passed by the Companies Registration Office before publication.

If no prospectus is issued by the company, a statement in lieu of prospectus has to be filed. This is in a special form and contains the essential matter which a prospectus would contain. The secretary, or one of the directors, has also to make a statutory declaration (whether a prospectus or statement in lieu of prospectus is filed) verifying the statements in the prospectus (or the statement in lieu thereof) and this has to be filed with the prospectus. If all is in order the certificate permitting the company to trade will be issued two or three days later and the company can embark on its enterprise.

It is no part of the scope of this work to give instructions on the management of joint stock companies. Many very useful works are published which give advice to secretaries of companies as to their duties and responsibilities under the Companies Acts. Neither is it a part of the scope of this volume to deal with the winding up of a company. These matters can be gleaned from works specifically dealing with this side of the law and are outside the objects of a book on conveyancing practice.

CHAPTER XII

WILLS AND CODICILS

THE making of a will is probably one of the most important and certainly one of the most dramatic acts of life. In story, history, poetry, and drama, it is one of the central themes—especially where the hero is "cut off with a shilling" for marrying the poor but beautiful heroine.

Few people seem to consider it necessary to go to the expense of employing a solicitor to draw up a will, thinking themselves quite competent to do so without legal aid. Some procrastinate and die without ever having reached the stage of putting their wishes into writing, while others scribble out their testamentary dispositions on torn half sheets of foolscap (giving rise to subsequent doubts as to whether the rest of the sheet contained further testamentary writing and had been wilfully destroyed by some interested person), badly expressed and sometimes not witnessed. If testators only knew this is often to the benefit of the lawyer who has the remunerative task of getting the decision of the Court on the meaning of some obscure passage in the will, or overcoming the defects occasioned by the testator's lack of legal knowledge, they would generally have recourse to the lawyer in the first instance.

Some testators (a large number in fact) make out their wills on printed forms obtainable for a few pence at stationers' shops. Experience shows that 75 per cent of these printed forms, when filled in, contain flaws necessitating affidavits of explanation

or of proper execution which hinder the ready proving of the will on the testator's death.

While a will must contain certain essentials, it is well to bear in mind that it is best to express all its terms in as simple language as possible. It is very often the layman who uses high-sounding legal phrases to express simple practical directions.

Anyone who is over 21 years of age and of sane mind can make a will. Even a lunatic can make a will during a lucid interval. This is mentioned by way of comment. It is no part of the duty of the solicitor, when asked to prepare a will to inquire whether his client is over age or of sound mind. In fact to make such an inquiry—especially the latter —might be deemed an insult. If the solicitor is instructed to prepare a will, he will doubtless prepare it and leave it to the future to see whether its validity is challenged.

It would, however, seem to be proper when the intending testator is known by the solicitor to be a person of weak intellect, or where such testator shows ample proof of being half witted—for the solicitor to use his own judgment as to whether to make out the will, if only to save himself from subsequent ridicule or abuse. Here let us diverge to say that a married woman can make a will disposing of her own separate property—just the same as a man can do. This is mentioned as many people still have an idea that a woman is still subject to restrictions upon disposing of her property —an idea which is quite incorrect.

There are certain fixed requisites for a will which a solicitor's clerk should bear in mind—

1. The will must be signed at the foot or end thereof by the testator or some person in his

presence and by his direction. Where a testator cannot write, he can make his mark instead. He can sign it in an assumed name or by writing his initials only. (But if he comes to the solicitor's office to sign—it will be best to get him to sign his name properly.) It should be borne in mind that the will must be signed at the *foot* or *end* thereof. If further paragraphs are added after signature, such further provisions are not valid or operative.

2. The testator's signature must be made or acknowledged in the presence of two or more witnesses, both of whom must be present at the same time. The testator must sign or acknowledge his signature before either of the witnesses sign their names.

Various forms of "signature clauses" are in use, the simplest of which is, "Signed by the testator in our presence and by us in his presence," and a longer but more common one being, "Signed by the testator, A. B. as and for his last Will and Testament in the presence of us both being present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses." It is a matter for the individual solicitor to choose which form of attestation he prefers. The choice of witnesses to a will need not create any difficulty for the solicitor —except that no beneficiary under the will is asked to act as a witness. The will is not invalid if a beneficiary acts as a witness—but the beneficiary loses the gift or benefit he would otherwise take. By acting as a witness he is automatically cut out of the will. This is equally the case where there is a legacy to an executor. It is wise, therefore, not to ask executors or beneficiaries to witness a will.

It is not necessary for the witnesses to see the will and the testator can cover it all up except his signature, provided the witnesses are informed that it is the testator's will and they are requested to witness it. The witnesses must be told the nature of the document they are witnessing.

Alterations, additions or obliterations in wills will require evidence as to the circumstances in which they were made or done. Where such alterations, or additions are initialled by the testator and both the witnesses, such initialling is usually accepted as evidence of the alterations etc. In other cases an affidavit of one of the witnesses to the will, proving the alterations or additions to have been made before execution will be required. If both witnesses are dead or cannot be traced, it will be necessary on proving the will to have an affidavit by the person finding the will, that the will was in the same condition now as when he found it. The probate authorities will then in their discretion pass or reject the alterations.

Where such alterations or additions were made after the will was signed, they do not form part of the will, and will be ignored.

If a will is lengthy it can be written on any number of sheets of paper, but the testator and both witnesses should sign at the foot of each page and the attestation clause should read: "In witness whereof I have hereunto set my hand to this my Will contained in this and the [four] preceding sheets of paper this day of 193 ."

We will now assume that you have these facts in mind when you take instructions from a client.

What should a will contain?

Well, first of all it should revoke all wills previously made by the testator. The testator may not have made any previous wills, but it is the usual thing to insert words revoking all previous wills, and if such words are framed, "I revoke all former Wills (if any) heretofore made by me and declare this to be my last Will and Testament," it will cover every eventuality.

The first and most important thing is for the testator to appoint an executor or executors, to carry out his wishes after his death. The testator can appoint any person or persons to be executors without consulting them—if, when he dies, they or any of them do not wish to act, they can easily renounce their appointment. Anyone can be appointed an executor, of whatever rank or station they may be. An infant (i.e. anyone under 21) can be appointed, but he will not be allowed to act if he is under 21 at the time of the testator's death (except that he can apply to be executor on attaining 21 if there are then still executorship duties remaining to be carried out).

A testator can nominate persons to act as executors in place of any executors who might die before him, or might die after him but before his estate is wound up. He can appoint his wife, or any beneficiary under his will. The fact that they benefit under his will does not vitiate their appointment, nor does the appointment deprive them of their benefit under the will. If a testator desires, he may appoint the Public Trustee or one of the large Banks or a Trust Corporation to act either alone or jointly with an individual or individuals.

If by the will certain trusts are created, such as

property given to beneficiaries subject to a life interest (i.e. the right to enjoy the income for life) of someone else, or an annuity given under the will, a trustee or trustees should be appointed. Very often the proposed executor is appointed both executor and trustee.

Next to the appointment of an executor is usually a direction to such executor to pay the testator's funeral and testamentary expenses and debts and any pecuniary legacies given by the will.

With regard to the gifts in a will, these may be given by general words or by specially mentioning them. For example, in the simplest form of will, a testator gives all his property, both real and personal, to one person (as, for instance, his wife, or only son or daughter). In each case, the words "I give and bequeath unto my dear wife Sarah Ann all my property," is sufficient to convey to her furniture, money, stocks and shares and land, without specifically mentioning them, and a gift of "all my furniture" will be deemed to include that coveted grandfather clock without mentioning it specially. Gifts of specific articles or property should be clearly expressed to indicate exactly the article or property given. Thus, it is always best to say: "I give my Sevres China tea service" rather than, "I give my best tea service." And, "I give my 500 Cumulative Preference shares in the X.Y.Z. Syndicate, Limited" is better than "I give my shares in the X.Y.Z. Syndicate, Ltd."

When giving charitable bequests testators very often omit to give the correct name of the charitable society they intend to benefit and this often causes much difficulty and sometimes a doubt as to which of two or three different charities the

testator intended to benefit. Thus, a gift to "the Widows and Orphans Fund" might be claimed with equal confidence by many societies, or "the Royal Blind Society" might be intended for any one of several blind persons' charities. Some charities have a long corporate title, St. Thomas' Hospital and Guy's Hospital for example, and might easily be misdescribed. If there is any doubt, the correct title of the charity should be first ascertained.

In the case of pecuniary (i.e. money) legacies, a testator should always be asked if he intends the legatees to get their legacy in full or whether they are to pay their own legacy duty. This legacy duty —in the case of strangers—i.e. those not related to the testator, amounts to as much as 10 per cent, which means that when a legacy of £100 is given in a will, the legatee gets £90, the other £10 going to the State.

This matter should always be explained to the testator, so that he may consider whether he wants the legatee to get the full legacy (and the duty to be paid out of his (the testator's) residue or the legatee to pay the duty.

The average will directs that the executors shall sell, call in, or convert into money, the testator's residuary estate, and after payment thereout of all testamentary expenses and debts, and the legacies bequeathed under the will, to divide the residue between the residuary legatees named in the will. It is wise in such cases to ask the testator what is to happen if one of the residuary legatees dies before him. Is the share of such residuary legatee to pass to his or her children or is it to fall into the general fund and increase the share of the

remaining residuary legatees? Sometimes a testator will leave a share to someone of tender years—. to be held in trust until such legatee attains 21 years. It is proper in such cases to ask the testator whether he wants the income of the share to accumulate until the child becomes 21 or whether he wants the income to be used for the maintenance, education, or benefit of the child until he or she comes of age, in which case a paragraph should be inserted in the will giving the trustee—or some other special trustee or guardian of the infant—power to use the income for such purpose.

If the testator has a business which he desires to be carried on at his death, it is necessary to give his trustees special powers of a more or less lengthy description. It is a matter for much consideration what provisions should be inserted, and the limits of this present work do not permit the matter being expanded.

Provisions of the character required can be obtained from the usual books of precedents. But it may be doubted whether it is wise even to provide for the carrying on of a business after the death of the testator, and whatever provisions are made there is bound to be difficulty in carrying out the testator's wishes.

Where the testator, after making his will, desires to alter it in some minor particular—revoking some legacy or making some fresh gift—he usually effects this by a codicil. If the whole fabric of his will is to be upset or re-arranged, it is best to execute a fresh will. Codicils are mainly to make an alteration of a minor character.

The codicil should start something like this: "This is a Codicil to the last Will and Testament

of me John Smith of 1 Smith Street London which Will is dated the 1st day of July 1933." The alteration of a legacy is usually made somewhat in this form: "Whereas by my said Will I have given to Mary Brown of 2 Smith Street London a legacy of Ten Pounds. Now I hereby revoke the said legacy of Ten Pounds and in place thereof I give to the said Mary Brown a legacy of Twenty-five Pounds." After making the required alterations the codicil will wind up: "And in all other respects I confirm my said Will."

The signature clause will read: "Signed by the Testator as a Codicil to his said Will (such Will being dated the 1st day of July 1933) in the presence of," etc., etc.

CHAPTER XIII

PROVING A WILL

WHEN a testator dies, it is necessary to "prove" his will before his estate can be wound up.

The method of proving a will in England is for the executor or executors to swear an "oath" verifying the death of the testator and the will and undertaking to administer the estate, and also fill up and swear an Inland Revenue affidavit giving full details of the testator's estate.

If an executor desires to have nothing to do with winding up the estate he can "renounce" his right, by filling up and signing a form of "renunciation." If he is the sole executor—or if all the executors renounce—a grant of letters of administration with will annexed will be granted to one of the persons entitled to share in the residue.

When an executor instructs his solicitor to prove the will, he should be asked for various things.

First of all he should be asked for the will. The solicitor should peruse this carefully—looking particularly at the clause under which the executor is appointed.

The solicitor, on receiving the executor and perusing the will, will bombard him with questions —all of which are essential to the preparation of the papers for proving the will—or for "probate" as it is called.

He will want to know the testator's address and occupation or description at the time of his death, when and where he died, how old he was, whether he left a widow or children or other relatives.

He will also want full particulars of the estate left by the testator. The solicitor's clerk can consult one of the forms of Inland Revenue affidavit (obtainable at the Estate Duty Office, Somerset House) to remind him of what information he requires.

For example, the executor will be asked for particulars of any Government Stocks owned by the deceased, or any other stocks or shares, what monies deceased had at his bank, whether his life was insured, what debts he left—and, in fact, what property he owned at his death.

Armed with all the information necessary to prepare the papers for probate, the solicitor's clerk will draw up the affidavit for Inland Revenue, and the probate oath for executor and have a further interview with the executor to read over finally both affidavits—the executor then swearing them before a commissioner for oaths.

The solicitor's clerk will now lodge at or post to the Estate Duty Office, Somerset House, the Inland Revenue affidavit for the estate duty to be assessed. The affidavit will be returned with the amount of duty and interest calculated, and such amount has to be paid to the Inland Revenue within the next 3 days. If not paid within 3 days, a fresh calculation of the interest on the estate duty has to be made.

It often happens that the executor has not sufficient money available to pay the estate duty. It is now very common for the banks to arrange an overdraft for the executor of the sum required for payment of estate duty. The duty can be paid by cheque—which is, in fact, the usual mode of payment.

After payment of duty the Inland Revenue affidavit is returned to the solicitor duly receipted and stamped and he will then lodge same, together with the oath and the will at the Receiver of Papers' Office, Probate Registry, Somerset House, and pay court fees based on the value of the estate.

In 4 or 5 days' time, the solicitor will call again, this time at the Sealer's Office, where, if the papers are in order, a grant will be given out to him. This is the official probate of the will and consists of a certificate signed by one of the Probate Registrars, authorising the executor to carry out his duties of winding up the estate—with which certificate there is annexed a copy (usually a photographic copy) of the will. He can also obtain sealed copies of the probate (price one shilling each) for production to companies, etc., on registration, thus avoiding the delay incidental to producing the original probate.

On receipt of this grant, an executor can proceed to wind up the estate. The probate is his legal authority and title for so doing. He can (if so authorised by the will) sell the testator's freehold or leasehold property, sell his stocks and shares and other securities, give receipts for monies due to the testator's estate and generally get in and distribute the estate in accordance with the will.

CHAPTER XIV

PARTNERSHIPS

ANOTHER of the tasks a solicitor's clerk may have to undertake at some time or another in the early years of his career will be the preparation of an agreement or "articles" of partnership. Two or more individuals—traders or professional men—will want to join together in business—or a father will want to relax his energies and admit his sons into his business, or a successful business man will want a partner.

The articles of partnership bind the partners together in this common venture. It provides for their drawings—as apart from their profits—the duties they will perform and generally set out the terms and restrictions imposed upon them as individuals.

In taking instructions for the partnership, certain points should be borne in mind—

Are all the parties to devote their whole attention to the business or is one or more of them to be at liberty to carry on some other trade or business as well?

In what shares are the partners to be interested in the business?

Where is the partnership banking account to be kept?

What duties are the respective partners to undertake in the business?

How much are the partners to be allowed for (monthly) drawings?

What capital is each partner to put in the business?

How often are the partnership accounts to be made up?

What is to happen if a partner retires or dies?

What provision is to be made for winding up the partnership?

With this and any other special information before him, the clerk can easily prepare a draft of the proposed articles of partnership and submit it to his clients for their approval. Forms of partnership agreement or articles can be found in most standard books of precedents.

The articles having been approved they should be engrossed, as many parts or engrossments being made as there are partners. These should be all executed by all the partners and their execution witnessed.

When the articles are presented for stamping with *ad valorem* duty one should be treated as the original deed and the others as duplicates. The duplicates should be stamped 5s. each and "denoted" with an Inland Revenue stamp indicating that the original has been stamped with full stamp duty on the transaction.

Immediately the partnership commences—the necessary form should be filled up and sent to the Registrar of Business Names, Kingsway, W.C. This form gives the business name, the nature of the business, the date the business commenced, and the names and addresses of the partners, together with particulars of where the business is carried on. When this has been signed by all the partners and filed (stamp 5s.), the partnership can start business secure in having complied with all the usual formalities.

Businesses are created and businesses decay.

What is to happen if the parties dissolve their partnership? This is a matter where the solicitor is usually brought in at the commencement of the dissolution.

The first step, obviously, is for the accountants of the partnership to prepare a balance sheet and profit and loss account of the business up to the date of the proposed dissolution. The solicitor will then take instructions from the partners as to the terms of the dissolution. It may be that one of the partners is leaving the partnership which will be continued by the other partners. Or after the dissolution, one of the partners is going to start business on his own account. All these matters will have to be provided for in the deed of dissolution. It will have to state what amount the outgoing partner is to receive, how the book debts of the partnership are to be got in (sometimes the continuing partner will take them over as part of his share), who is to be responsible for the monies due to creditors of the partnership, and so on. Particularly there may be a provision restricting an outgoing partner from carrying on the same trade or business as the continuing partners within a radius of, say, one mile, two miles, or five miles of the place of business of the continuing partners. Forms applicable to all these circumstances can be obtained from books of precedents.

When the partnership is dissolved it is necessary to insert a notice of dissolution in the *London Gazette*. Forms for this purpose can be obtained from any of the principal law stationers. The notice has to be signed by all the partners and verified by statutory declaration. It should be sent to the office of the *London Gazette*, Westminster, S.W., or

to H.M. Stationery Office, Kingsway, W.C. The cost of insertion is either 15s. or £1 2s. 6d.

In addition to the notice in the *London Gazette*, notice of the change in the partnership should be given to the Registrar of Business Names, Kingsway, W.C. If some of the partners continue business in the same name, the form of notice of change in particulars should be filed, but if the business is discontinued, notice of cessation of the business should be given.

Care should be taken to see that all trade creditors and debtors are informed of the cessation of business by notice or circular letter, which notice or letter should state who will be responsible for paying the partnership debts and who is to receive any debts due to the partnership.

It should be borne in mind that the fact that on a dissolution, one partner is assuming responsibility for the partnership debts, does not free the outgoing partner or partners from liability for such debts. As between the creditor and the partnership, all the partners are equally liable to pay, and judgment can be obtained against all or any of them. But if an outgoing partner is forced to pay the whole or any part of a partnership debt, he can call upon the continuing partner to recoup him for such payment, under the provisions of the dissolution deed.

CHAPTER XV

POWERS OF ATTORNEY

IT often becomes necessary for a person going abroad or being otherwise unable to attend to his own affairs (while being, of course, of sound mind) to appoint someone to act on his behalf as his "attorney." This word "attorney" should not be confused with the other word which means a solicitor, but is intended to cover the description of a person authorised to transact business on behalf of someone else—in short, an agent.

The usual general power of attorney authorises the attorney to receive and give a discharge for all monies due and payable to the principal, to sue for unpaid monies, prosecute and defend actions on behalf of the principal, and generally to manage the principal's business affairs in all respects as if he were the principal. It gives him an undertaking and indemnity by the principal to ratify and confirm all that the attorney has done and to keep him freed from all consequences of the acts he has done on the principal's behalf.

Some powers of attorney are limited to empowering the attorney to do some certain thing, such as to receive repayment of a mortgage, wind up a trust estate or sell or transfer a house or stocks and shares. It is usual to make the power irrevocable for one year.

A very common form of power of attorney is that in use on the Stock Exchange for the transfer of Government inscribed stocks. By a somewhat archaic practice, many Government and other

stocks are registered by being "inscribed" or written in the Books of the Bank of England—large ledgers containing the names of the present holders of the various stocks. The transfer of these inscribed stocks is effected by the seller or transferor attending personally at the Bank of England and signing the stock register book. The sheer impossibility of getting the average seller of the stock (who might be resident in Scotland or the Isle of Man) to attend personally at the Bank of England to sign the books on selling £50 worth of inscribed stock has led to the practice of having a special form of power of attorney in favour of a stockbroker, to enable him to sign the stock registers as the attorney of the stockholder.

To return to the ordinary power of attorney (the Bank of England form is a special form used for a special purpose and is prepared by the Bank of England), the power, when executed by the principal, is usually filed at the Central Office of the Supreme Court. It is not obligatory to file the power at the Central Office, but it is very convenient, and the great majority of powers are filed as a matter of course.

To file the power of attorney at the Central Office it must be accompanied by an affidavit verifying the execution of the deed by the principal.

A copy of the power should be made and lodged at the Central Office at the time of filing to come back to the person lodging it—as a certified or "office" copy. The production of this office copy will on all occasions be sufficient to prove the appointment of the attorney in all respects as if the office copy were the original power of attorney.

A trustee, intending to remain out of this country for a period exceeding one month can execute a power of attorney delegating his powers as trustee to an attorney or agent. A trustee power of attorney *must* be filed at the Central Office within 10 days of its execution (or if executed abroad, within 10 days of its arrival in England) accompanied by a statutory declaration by the "donor" or trustee-principal that he intends to remain out of the United Kingdom for a period exceeding one month from the date of the statutory declaration or from a date therein mentioned.

Where a deed is executed by an attorney, by virtue of a power of attorney—the attestation clause should read: "Signed, Sealed and Delivered by A. B. by C. D. his attorney in the presence of," etc., and the attorney should sign, "A. B. by C. D. his attorney."

It must be borne in mind that in land registration cases, the Land Registry will, where the original power of attorney is in the possession of the attorney (i.e. has not been filed at the Central Office), call for the power to be filed in the Land Registry. It is better, therefore, to file the power at the Central Office in all cases, so that even if the office copy is lost or destroyed, a further office copy can be obtained for a small charge. It should be remembered that a purchaser is entitled to have the power of attorney or a copy thereof given to him free of charge, if it was created on or after 1st January, 1926.

Where a power is over a year old, a purchaser is entitled to evidence that the power has not been revoked, or even further, that the donor of the power is still alive. This is usually proved by a

statutory declaration by the attorney stating that the donor has not revoked the power or died, and, if possible, exhibiting a recent letter written by the donor as proof that he was alive at the date of such letter.

CHAPTER XVI

INFANTS

AN "infant," in the legal significance of the word means any person who is under 21 years of age. The law presumes, and has long presumed, that the age of responsibility for one's own actions is 21 years; a person under that age is thus designated an "infant," a person over that age is of full and responsible age. In probate matters there is, it is true, some distinction between those under 12 years of age—"infants" and those over that age—"minors," but this distinction largely relates to the power to nominate someone as an administrator of an estate—and does not otherwise provide any distinction between an infant of one year and an "infant" of twenty years of age.

By the law (which was amended in 1925), an infant is incapable of holding a legal estate in land, or of being a "tenant for life" under the Settled Land Act, 1925. If someone should, by mistake (i.e. ignorance of the law), convey property to an infant, either beneficially (i.e. for the infant's own benefit) or as a trustee, or as a mortgagee, the conveyance will not be void, but will operate, in the case of a conveyance to the infant beneficially, as an agreement to execute a settlement and in the meantime to hold the land in trust for the infant. If the conveyance be to an infant on trust, the conveyance will operate as a declaration of trust and will not pass the legal estate. If the grant or transfer is of a legal mortgage to an infant, it operates as an agreement to execute a transfer thereof to

the infant when he or she shall attain 21 and in the meantime to hold any beneficial interest in the mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made (i.e. the infant).

Where the conveyance is to an infant beneficially jointly with one or more other persons of full age, the effect is to vest the legal estate in the other person or persons on the statutory trusts, that is, on trust for sale (to sell as trustee for themselves jointly with the infant). If the conveyance is to an infant on trust jointly with one or more other persons of full age, the effect is to disregard entirely the appointment of the infant as trustee and treat the deed as if the infant had not been named therein.

An infant, being by law incapable of managing his or her affairs, has to have a guardian or guardians. The present law on the subject is set out in the Guardianship of Infants Acts, 1886 and 1925. By the later Act it is provided that where in any proceeding before any Court, the custody or upbringing of an infant, or the administration of any property of an infant is in question, the Court in deciding that question, shall regard the welfare of the infant as the first and paramount consideration; also, that on the death of the father of an infant, the mother, if surviving, should be the guardian of the infant either alone or jointly with any guardian appointed by the father and on the death of the mother, the father, if surviving, should be the guardian, either alone or jointly with any guardian appointed by the mother.

If an infant is appointed an executor under a will, he will be unable to act unless or until he

attains 21—and probate will not be granted to him until he is 21. But in place thereof, a grant will be made to his guardian (or such other person as the Court thinks fit) for the period of the infant's minority. The grant will be to A. B. until C. D. attains 21 and the grant will cease to be valid immediately the infant becomes 21, but the aforetime infant has no power to act until probate of the will has actually been granted to him.

An infant can contract to sell land, but not the legal estate in it. Any contract to sell the legal estate in land would be construed as a contract to sell any equitable interest in the land which the infant might have, subject to his right to repudiate the contract on his attaining 21.

Strange to say, however, an infant can sue a party of full age for damages for breach of contract. The reason is that it is an obligation or undertaking by a person over 21, and thus legally binding.

Where an infant sells or conveys his interest in land, he can either avoid or ratify the same on attaining 21. If he does not within a reasonable time after attaining his majority repudiate the conveyance it will become binding automatically. If he dies before he is 21 his personal representatives can repudiate it.

When an infant is married, he or she has power to give valid receipts for all income (and accumulations of income) to which the infant is entitled—in the same manner as if the infant were of full age.

Infants can (if a male when over 20 years of age and if a female when over 17 years of age) execute a marriage settlement of any property to which he or she may be entitled.

A power of attorney given by an infant is absolutely void, but he can appoint an agent to do any specific act or acts which he could himself do. A married woman, whether an infant or not, can appoint an attorney to do anything for her which she might herself execute or do, such, for example, as receiving and giving a discharge for income receivable by her.

CHAPTER XVII

LUNATICS

A LUNATIC or person of unsound mind is of necessity incapacitated from conducting his or her own affairs. A lunatic cannot, for example, make a voluntary conveyance (i.e. gift) of his property. In other cases he can—in an interval of lucidity, convey his property on sale—provided he understands the effect of what he is doing. So, too, during a period of lucidity, he can make a will. If, however, he has been found of unsound mind by inquisition, or has had an Order under sect. 116 of the Lunacy Act, 1890, made against him, the control of his property has been taken away from him and put into the hands of the Master of the Management and Administration Dept. (i.e. the Master in Lunacy) on behalf of the Court. He has, therefore, no power remaining in him even during a lucid period of managing his own affairs.

It is usual where a person is found to be mentally unsound to apply for the appointment of a receiver under sect. 116 of the Lunacy Act, 1890. This is almost invariably the procedure now adopted. The practice of appointing a committee after an inquisition is still open, but has almost fallen into disuse.

The supreme jurisdiction in lunacy is exercised by the Lord Chancellor, the Master of the Rolls and the Lord Justices of the Court of Appeal. But the ordinary procedure as to the administration and management of a lunatic's estate is exercised by the Master (subject to appeal to the Lord Justices).

The procedure to obtain an Order under sect. 116 of the Lunacy Act, 1890, is to issue a summons before the Master of the Management and Administration Dept., asking for the appointment of a receiver. At the time of issue of the summons, the applicant must lodge with the master an affidavit by some medical man—either the medical superintendent of the institution in which the patient is detained or the usual medical practitioner of the patient, if not in an institution, and also an affidavit by some relative of the patient of the "kindred and fortune" of the patient. Notice of the hearing of the summons is served on the patient (unless the Master dispenses with service), and if the Master is satisfied with the medical evidence, he makes an order appointing the applicant or some other fit and proper person as the receiver.

The duties of the receiver are usually limited to receiving and paying away the income of the estate. He is not empowered to deal with the capital of the estate in any way except under the direction of the Master. It is usual to provide that the whole of the patient's income shall be available for the patient's maintenance. The receiver has to get in the income, to pay any outgoings, to pay for the maintenance of the patient and to render to the Master every year or half-year a statement of his receipts and payments—with all vouchers. This account, which is known as the "Receiver's Account," has to be in special form.

The maintenance of the patient is the first consideration and takes priority over the debts owing by him. If the income is insufficient to maintain him, application should be made to the Master to utilize capital monies in aid of income.

The Court has authority to sell the property of the patient in proper cases. It is necessary to satisfy the Master that it is expedient to sell, and also to furnish him with evidence as to value. The Master—in a proper case—makes an Order directing the receiver to sell—and the receiver carries out the Order under the Master's instructions. For example, the Master will decide whether the sale is to be by public auction or private contract, will fix the reserve in case of auction, will settle the particulars and conditions for sale and the draft conveyance. The Order almost invariably directs that the proceeds of sale shall be lodged in Court.

In preparing conditions of sale care should be taken to ensure that the purchaser is aware that the sale is pursuant to an Order under the Lunacy Act, 1890 (or "53 Vic., c. 5" as it is always expressed), and that the purchase money has to be lodged in Court before completion.

The Order to sell will, in cases where it is applicable, direct the receiver to exercise a lunatic-mortgagee's power of sale under any mortgage of the land in question.

It is not necessary to submit the answers to requisitions to the Master for approval, but it *is* necessary to submit the draft conveyance to the Master for approval and subsequently produce the engrossment of the conveyance to the Master for sealing, it being necessary for the solicitor to certify that the engrossment has been examined with the draft and is correct.

Where the lunatic is a trustee (either as holding land as a co-owner upon the statutory trusts contained in the Law of Property Act, 1925, or otherwise), an application for leave to appoint a new

trustee or new trustees must be made to the Master. In the case of a lunatic holding land as a co-owner on the statutory trusts, no lease or sale of the land can be effected until a new trustee is appointed in place of the lunatic.

A receiver can let the property of the patient for terms not exceeding 3 years without applying to the Master for leave. If it is proposed to grant a lease or tenancy for any longer term than 3 years, the receiver must obtain the Order of the Master. Evidence must be furnished that the rent is a fair and proper rent for the premises and that the proposed lessee is a responsible person.

Where it is required that a mortgage of which the lunatic is the mortgagee should be reconveyed or transferred, it is necessary to obtain an Order of the Master. No evidence is necessary, but the form of reconveyance has to be settled and approved by the Master. The Order appoints the receiver to execute the statutory receipt or the reconveyance or transfer on behalf of the lunatic.

In general, the disposition and control of his property which a lunatic would (if sane) undertake without interference, is undertaken by the Court—acting through the Master—except that the executive duties are carried out by a receiver. All the actions of a patient, such as dissolution of a partnership, instituting or defending proceedings, raising or lending money on mortgage, etc., etc., are undertaken and controlled by the Court.

If and when the patient recovers, application is made to the Master to restore to the patient the control of his own affairs. This application has to be supported by such medical evidence as will satisfy the Master of the patient's recovery. If

there is any doubt on the matter the Master will adjourn the application for one of the official "visitors" to see the patient and report to the Master on the mental capacity of the patient. These "visitors" are connected with the Master's Department, and spend their time in visiting lunatics to see that they are properly maintained and what progress towards recovery the lunatic is making.

On the Master being satisfied of the complete recovery of the patient, an Order is made giving all necessary directions for the transfer to the patient of all his property and effects.

If the patient dies without recovering his mental powers, notice should be given to the Management and Administration Department, at the Royal Courts of Justice, immediately it is known.

The death of the patient automatically determines the Order of Court and the duties of the receiver.

An application by the legal personal representative of the deceased should be made as soon as possible after the death, and the receiver should be joined as an applicant or served with notice of the application. An affidavit proving the death and exhibiting a death certificate must be filed. The Order made is usually to discharge the fidelity bond entered into by the receiver when he was appointed, to direct the payment out of Court to the personal representative of the deceased of all funds in Court and as to the receiver either rendering a final account—or dispensing with such account.

The costs of all proceedings relative to the appointment of a receiver or the administration of a

patient's estate are directed by the Master's order to be paid out of the patient's estate.

The jurisdiction of the Master is sometimes exercised respecting persons who, while not of unsound mind, are incapable through mental infirmity arising from disease or age of managing their own affairs. Large numbers of cases of this kind are annually administered by the Department.

In "small cases," i.e. where the property of a lunatic does not exceed £700 in value, or the total income does not exceed £100 a year, an application can be made for the appointment of a receiver on production of a medical certificate (i.e. without an affidavit) and a signed statement of the kindred and fortune of the patient. The proceedings are conducted without the payment of any Court fees and form a not inconsiderable part of the work of the Management and Administration Department.

Generally, all receivers have to enter into a guarantee or fidelity bond (usually with a guarantee or insurance company) for the due and proper performance of their duties. The premium on the bond is paid out of the income of the patient's estate. The amount of the security to be given is fixed by the Master according to the amount of the patient's estate.

Receivers must keep strict and accurate accounts of all their dealings and transactions in connection with a patient's estate and a separate banking account is essential.

CHAPTER XVIII

LETTERS OF ADMINISTRATION

LETTERS of Administration to the estate of a deceased are of two kinds—

1. Simple letters of administration where the deceased has left no will or testamentary disposition; or

2. Letters of administration where the deceased left a will but did not therein name any executor.

Since 1925, the order in which the persons entitled to take out a grant of simple letters of administration (in respect of a person dying since that date) is as follows—

1. The husband or wife surviving the intestate person.

2. Children or grandchildren.

3. Father or mother.

4. Brothers and sisters of the whole blood, or the issue of those who are dead.

5. Half-brothers and half-sisters.

6. Grandparents

7. Uncles and aunts of the whole blood or the issue of those who are dead.

8. Step-uncles or step-aunts (i.e. uncles and aunts of the half-blood) and the issue of those who are dead.

9. The Crown.

10. Creditors.

It will be seen that if there are no relatives nearer than the issue of a first cousin, the Crown takes the whole estate as what is called *bona vacantia*.

A grant of letters of administration is obtained by swearing an oath for administrators, together

with an affidavit for Inland Revenue (as on a grant of probate) and a bond to be executed by the proposed administrator and by his sureties.

The oath for administrators has to be sworn by the proposed administrator. It must state the relationship of the proposed administrator to the deceased and if persons with better right to a grant exist, the oath must show how they are cleared off. They can, for example, by signing a form, renounce their right to take a grant.

It is usually preferred to grant administration to a living person than to representatives of a deceased person, and, therefore, a nephew or niece of the deceased entitled to share in the estate is preferred to the personal representative of a deceased next-of-kin.

Where the person entitled to take a grant is a minor or an infant, the grant must be taken through their guardian or guardians. The grant is limited for the use and benefit of the minors and infants until one of them becomes 21 years old. It then ceases and application has to be made for a full grant which is made to the one of full age and the guardian of those still under 21.

A grant of administration on behalf of minors or infants can only be made to a trust corporation or to not less than two individuals. A trust corporation can be elected as a guardian, but in such a case the election (i.e. the document) must show that all the nearest relatives of the minor or infant have renounced their right to act and have consented to the appointment of the trust corporation.

A grant of administration with will annexed is usually made to the residuary legatee of the testator.

Whenever a grant of letters of administration is applied for (whether with will annexed or otherwise) it is necessary for the proposed administrator to enter into a bond for the faithful administration of the estate.

The wording of each bond depends on the circumstances of each individual case. Printed forms can be obtained and adapted to the particular circumstances. "The Bond" is given to the Principal Probate Registrar. There must be two sureties, each of whom must be a responsible person and must be clearly described in the bond. The surety who is described as a "clerk" or "gentleman" is certain to be rejected. A married woman should always be described as "the wife of A. B." A solicitor's clerk can be a surety—provided it is certified that he is not a clerk to the solicitor acting for the proposed administrator. The fact that the surety is related to the deceased—or interested in the estate—is no objection to his being such surety.

If the gross estate of the intestate does not exceed £50 one surety is sufficient.

An approved trust corporation will be accepted in lieu of the two sureties required. If it is proposed to get a trust corporation to become the surety—it is necessary first to approach the corporation and fill up a proposal form giving the corporation particulars of the estate. The corporation will, in satisfactory cases, always be prepared to enter into a bond—fidelity guarantee being part of the usual business of all the large insurance companies who obtain good premiums for what is usually a very small risk.

The affidavit for Inland Revenue having been sworn and lodged at the Estate Duty Office and

the duty assessed and paid (see Chapter XIII) the papers (oath, bond and affidavit—and if the case is an administration with will annexed—the original will) are lodged at the Probate Registry and the fees paid, and in the course of the next 4 or 5 days, if the matter is in order, the Probate Registry will issue a grant of letters of administration in favour of the person named in the oath—duly signed and sealed. This document is the legal authority which empowers the administrator to take the necessary steps to get in the estate, sell the whole or any part of it which does not consist of money, pay the debts and funeral expenses and costs, and distribute the residue amongst the persons entitled to share in the estate.

To ensure the speedy registration of the Letters of Administration with Companies, etc., the Probate Registry will issue any number of sealed copies of the grant at one shilling each.

While it is the duty of an administrator to wind up the estate with all reasonable speed, he is himself the person to decide whether or not to sell or retain in hand any property. It will be obvious that while in ordinary cases it is desirable and proper to sell the land or goods or stocks and shares of the intestate, there may be many cases where it is in the best interests of the estate to postpone such sale—there may be a slump, for example, in the share market, or there may be a reasonable probability that the land to be sold will appreciate in value in the next year or two and thus produce a much greater financial result for the ultimate beneficiaries.

If there is any point on which an administrator requires expert legal advice he is perfectly justified

in instructing his solicitor to obtain counsel's opinion on the matter and, when so advised, to apply to the Court for directions as to how he is to administer.

When an administrator or executor has completed his task of winding up the estate, he should, before paying over to the beneficiaries their shares in the estate, advertise for creditors as shown in Chapter XX, and if no claims are received prepare an account of the monies received and paid by him and produce it or offer to produce it to each of the beneficiaries. He should then get such beneficiaries—on receiving their money—to sign a special form of receipt (preferably at the foot of the cash account) certifying that they have examined the account and are satisfied of its correctness and releasing the administrator from all liability in respect of his administration.

It should be remembered in connection with an administration that the administrator is like a trustee or liquidator and has practically all powers necessary in the winding up of the estate and the distribution of the residue. An administrator can (if going abroad) appoint an attorney—under power of attorney—to act for him, and is entitled to be paid all costs and expenses incurred by him in connection with the estate.

If the administrator dies before he has wound up the estate, his executor or administrator (if there is a grant in respect of his own estate) or else some person entitled according to their relationship to the intestate, can obtain a *de bonis non* grant, to enable them to administer such part of the estate of the intestate as still remains unadministered.

A little matter of conveyancing practice relative

to probates and letters of administration may be here mentioned. This is that notice of the assent or conveyance of any land by an executor or administrator should be endorsed on the grant of probate or letters of administration. The object of this is to ensure that any purchaser inspecting the probate or letters of administration as part of the title may have warning or notice of the conveyance or assent.

Probates and letters of administration are documents of title. It is, however, unusual to hand them over to any purchaser with the title-deeds; but they should be produced for inspection if in the vendor's possession. If not, the purchaser's solicitor should search at Somerset House for particulars of the grant.

CHAPTER XIX

STAMPS AND STAMP DUTIES

IT is not intended in this chapter to give particulars of the stamp duties payable on conveyances and other deeds and documents common to conveyancing. These can be better obtained from every solicitor's diary or desk book. Nor is it intended to furnish a list of the stamp duties imposed by old statutes now repealed and which would assist a solicitor or his clerk in checking the stamps on old deeds.

But there are certain general points of conveyancing practice relative to stamps and stamp duties which every clerk should know.

For example, stamp duty on a conveyance must be paid within 30 days of the execution of the deed. If not stamped within that period, a penalty is payable for failure to stamp.

Furthermore, a deed cannot be produced in a court of law unless it has been duly stamped.

A contract or agreement under hand must be stamped within 14 days of signature. If not, there is a penalty for non-stamping.

The date of execution or signature is the date from which the 30 days or 14 days will run—not the date of the deed or agreement. In practice, however, the Inland Revenue officials usually accept the date of the deed as the date of execution—principally because there is no other evidence of the date of execution.

If a deed or document is executed or signed abroad, the period in which it may be stamped will

start from the date at which it arrives in England. The envelope in which the document arrived in England is usually produced to show the date stamp of the arrival of the document in England, but the time necessary for a document to arrive in England from a particular place abroad can usually be estimated within the limits of a day or two.

Under the Finance Acts, 1909 and 1910, stamp duties on conveyances for a consideration of over £500 were doubled. As it was anticipated that this would result in sales of property being split up into separate deeds where possible so as to get away with the smaller stamp duty (under £500), it was provided that to enable anyone to take advantage of the lower rate of stamp duty on conveyances, every conveyance or assignment of property of under £500 in value should have a certificate that the transaction effected by the deed did not form part of a larger transaction or a series of transactions the amount or value or the aggregate amount or value of the consideration of which exceeded £500. In the absence of such a certificate stamp duty at the higher rate is payable, even if the consideration is less than £500.

A contract under seal is liable to a duty of ten shillings. When a contract is under seal with a company or corporation, it can only be completed by the seal of the company or corporation being affixed. A company cannot sign its name. The Inland Revenue authorities treat such a contract as being a contract under seal. The only way to avoid having to pay 10s. stamp is for the contract to be signed by some duly authorised agent for and on behalf of the company.

Where a contract is for the grant of a lease, it is

usual to refuse to stamp such a contract unless the stamp duty chargeable on the lease is paid on stamping the contract. The object of this is to ensure that the lease duty is paid. It is found that in many cases, the lessor and lessee are content to trust to the terms of the lease as recited in the contract, without even actually preparing and exchanging a formal lease and counterpart.

In the case of a contract for sale of a business there is a rather curious distinction imposed between a business sold to a limited company and a business sold otherwise. The contract for sale of a business to a limited company has to bear stamp duty on that part of the consideration which will not be subsequently included in a conveyance. If it is not, the Registrar of Joint Stock Companies will not allow it to be filed. The contract for sale of a business is, however, deemed to be sufficiently stamped—as regards enforcing its performance or obtaining damages for its breach if it is stamped at sixpence (under hand) or ten shillings (under seal).

Contracts for sale of a business to a limited company need special care in preparation, so as to avoid paying more duty than is necessary.

For example, no stamp duty is payable on property which passes by "delivery"—such as loose plant, stock in trade, furniture, cash, or money on current account at the bank, but money on deposit at the bank will pay duty. It should, therefore (to avoid duty), be temporarily transferred to current account until after the company is incorporated and then once again placed on deposit.

Where a deed is executed in duplicate, the duplicate deed should be stamped with a 5s. stamp (or if the original deed is stamped less than 5s. the

same amount as the original) and lodged at Somerset House—Deed Marking Branch—to have the amount of the duty paid on the original deed denoted or marked on the duplicate. This denoting is effected by a special stamp being impressed on the duplicate that "original marked with £*x*."

Where it is difficult or impossible readily to ascertain the stamp duty on a deed—or where, for example, a deed of gift comprises property which requires to be officially valued before the Inland Revenue will assess the stamp duty on it—the deed can be presented for official adjudication when a true copy or sufficient abstract has to be lodged. When the Inland Revenue Authorities have assessed the duty they will notify the applicant, who must then pay the duty forthwith. If the applicant is dissatisfied with the assessment and desires to appeal against it, he must pay the duty first, before he can lodge an appeal. The appeal must be lodged within 21 days of the assessment and takes the form of a request to the Commissioners of Inland Revenue to state a case. The Commissioners must then state and sign a case and deliver it to the applicant, who can thereafter within 7 days set the case down for argument before a judge of the King's Bench Division.

CHAPTER XX

TRUSTS AND TRUSTEES

ONE of the matters which will most bewilder the raw clerk entering a solicitor's office is the references to trustees. He will hear of trustees of a will, trustees for sale, settled land trustees and trustees of a settlement. He will be informed of a trustee in bankruptcy, a trustee for debenture holders. And he will reasonably wonder what these various trustees are supposed to do.

First of all let us get a plain definition of "trustee." What is a trustee? He is a person to whom the management of property is committed in trust for the good of others. This is a perfectly understandable definition of a trustee which even the office boy can understand.

Let us first of all consider the simplest forms of trustees. There is, for example, a trustee appointed under a will. In many wills the executor is also appointed "trustee." This emphasises the difference between an executor and a trustee. The former has to wind up and distribute the estate. When he has got in all the assets, sold the testator's stocks and shares or other property directed to be sold, paid the funeral expenses and debts and legacies and death duties and distributed the estate, his duties are at an end. But if the testator left any monies "in trust," that is, declared that some part of his estate should be set apart—as, for example, until his son or daughter attained 21 or until his wife died—the income from the fund being in the meantime used for the maintenance of the son

or daughter or wife—the management and control of the fund devolves upon the person appointed by the testator to carry out the trust, i.e. his *trustee*.

The powers and duties of trustees under a will are usually set out in the will or codicil under which he or she is appointed. In so far as they are not set out they are provided by statute (Trustee Act, 1925). The powers of a trustee under a will are fairly wide, they are able to exercise their own discretion on many matters relating to their trust, and they are not liable for any loss resulting from their changing any investment or selling any trust property, if their discretion was exercised in good faith and they were not guilty of culpable negligence.

It is usual in winding up a testator's estate to transfer the particular fund—if stocks or shares for example—into the name or names of the trustee or trustees as trustees of the will of X. Y., deceased. Many companies, however, strongly object to notices of a trust appearing on their share registers and insist on the trustees' names appearing in the registers as the owners of the shares.

When a trustee desires to retire from his trusteeship, the matter is usually carried out by a deed of appointment of new trustees. The deed sets out the terms of the will, and the state of the trust and that the trustee is desirous of retiring and appoints the newcomer to be trustee in his place. In some instances it is thought fit to add a paragraph vesting the trust property in the new trustee—but this is really unnecessary.

So also, when one of two or more trustees dies, the survivor or survivors can appoint a new trustee in place of the one dying—to act jointly with those still surviving.

If, however, there is no trustee alive to appoint new trustees and there is no other person who possesses the power of appointing new trustees, any person beneficially interested in the trust should apply to the Court on originating summons for the appointment of a new trustee or trustees in place of the one so dying.

Trustees can, in their discretion, from time to time (but not more than once in every three years unless the extent of the estate makes it reasonably necessary), have the accounts of the trust property examined or audited by an independent accountant and if they do so they are supposed to produce to such accountant all necessary vouchers and give the accountant all necessary information to enable him to verify such accounts.

The costs of such examination or audit are payable out of capital or income as the trustee thinks fit. In default of any direction by the trustee, costs attributable to capital will be borne out of capital and those attributable to income will be borne out of income.

A trustee can invest any trust monies in his hands whether already invested or being money in hand in any public funds or Government securities of the United Kingdom, or on real or heritable securities in the United Kingdom, in the stock of the Bank of England or the Bank of Ireland, in the various Indian Government stocks, in most of the municipal or county council stocks of the United Kingdom and in certain railway, water and other stocks. A list of trustee securities can be found in most legal diaries.

A trustee who has a power of sale given to him by the will or other trust instrument from which

he derives his powers can sell or concur with other persons in selling all or any part of the property of the trust either by public auction or private contract subject to any conditions as to title or evidence of title he may think fit, with power to vary any contract for sale or to rescind any contract and to re-sell without being answerable for any loss.

A trustee is not bound to undertake personally the work involved in carrying out the trust. He can, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or any other person to transact any business or do any act required to be done in carrying out the trust, including even the receipt and payment of money and he is entitled to be allowed and paid all charges and expenses incurred and is not responsible for the default of any such agent if employed by him in good faith.

Still further, a trustee can permit his solicitor to have the custody of a deed having in the body of such deed or endorsed thereon a receipt for money or valuable consideration—signed or executed by the trustee in advance of receiving the money or consideration—so that the solicitor can hand it over to some purchaser on completion, or on receiving payment of mortgage money and the trustee will not be liable for breach of trust when he has handed such deed to his solicitor in good faith. There are so many cases where a deed is executed before completion and handed to a solicitor to carry out the transaction that the importance of this power should be remembered by the solicitor's clerk, who will be able to persuade a timid trustee that he is not doing anything wrong or even risky in signing or executing a

document operating as a receipt for money before he actually receives the cash.

Where a trustee proposes—the trust having come to an end—to distribute the property of the trust amongst the persons ultimately entitled to such property, he should advertise for claims before distributing the estate. The advertisement (which is in a form which can be seen almost every day in *The Times*) should be inserted in the *London Gazette* and in a newspaper circulating in the district in which the property is situate and should give notice of the proposed distribution and ask all persons interested to send in their claims within two months of the last issue of the newspaper containing the advertisement, after the expiration of which time the estate will be distributed.

This advertisement protects the trustee from all claims not received after the two months have expired.

Where a trust is in favour of an infant, the trustees can, in their sole discretion, pay the income of the trust to the parent or guardian of the infant for or towards the maintenance, education, or benefit of the infant. Alternatively, they can accumulate the income, investing it from time to time in authorised investments and handing over the capital and accumulations of income to the infant on his coming of age.

The trustees can also pay or apply any capital money subject to a trust, for the advancement or benefit of the infant provided that the money advanced does not exceed one-half of the infant's share in the trust property.

In addition to trustees under a will or settlement there are various other classes of trustees.

There is a trustee in bankruptcy. When a person becomes bankrupt, his property vests in a trustee for the benefit of his creditors. This is almost always—at the time of making a receiving order—the Official Receiver in Bankruptcy for the district in which the debtor resides or carries on business. Soon after the first meeting of creditors an outside trustee is usually appointed in place of the Official Receiver—nearly always a qualified accountant—and he becomes the trustee of the bankrupt's estate, getting in the assets, paying the preferential claims and the expenses of the petitioning creditor's solicitor and himself and distributing the assets (through the Board of Trade) amongst the creditors.

Then there are trustees of a charity. Religious and philanthropic bodies holding property—such as church buildings, orphanages and the like—usually vest their property in trustees who are responsible for the safe keeping of the land or buildings or other securities of the institution.

So also friendly societies have their trustees in whose names the collected monies are invested.

Where there are substantial issues of debentures by a limited company, it is usually considered expedient to appoint two or three trustees to represent the interests of the debenture holders and to do all such things as a debenture holder might himself do in the absence of such trustees.

In short, there are innumerable cases where trusts of a simple character are created and trustees appointed; and such trustees derive their powers and duties from the deed or will under which they obtain their appointment—or so far as the deed or

will does not direct to the contrary—from the Trustee Act, 1925, or other statutory authority directly relating to their duties or responsibilities. If there is any difficulty arising out of the trust or the trustee has committed any innocent breach, he can always go to the Court for directions or to the beneficiaries for an indemnity.

The subject of settled land trustees must be dealt with in another chapter.

CHAPTER XXI

DEATH DUTIES

EVERY solicitor's clerk ought to know something about death duties.

He learns a little from the start of his career, when he has to copy the Inland Revenue affidavit for swearing by an executor or administrator and has to calculate the estate duty and interest payable to the Revenue before obtaining probate or letters of administration.

He knows, as a general principle, that on the death of a property owner the State claims a percentage of the deceased's property for death duties, he knows that in the Inland Revenue affidavit the proposed executor or administrator has to give details of the deceased's property, and he probably knows what the present rates of estate duty are. In addition to the estate duty paid on the Inland Revenue affidavit, there may be additional estate duty payable after the estate has been got in (or estate duty overpaid returnable) and that there are other death duties—legacy duty and succession duty—which may have to be paid.

First of all, then, let us consider estate duty.

Estate duty arises under various Finance Acts, commencing with the Finance Act, 1894, and is payable (with certain exceptions) on the principal value of all property real or personal, settled or unsettled, which passes or is deemed to pass on the death of any person dying after 1st August, 1894. The property "deemed to pass" includes property in which the deceased had an interest ceasing on

his death to the extent of the benefit accruing from the cesser of such interest. It also includes personal gifts made by the deceased within three years before his death, and gifts to charity, if made within one year of decease.

Estate duty ranges from 1 per cent on estates under £500 to 50 per cent on estates over two million pounds in value.

The duty is payable on delivery of the Inland Revenue affidavit, or within 6 months after the death, with interest on the personal property from the date of the death until payment. Duty on real (freehold) property remaining unsold may be paid by 8 yearly or 16 half-yearly instalments. Interest on duty on freeholds is chargeable after one year from the date of death.

In arriving at the value of the estate, a deduction may be made for reasonable funeral expenses and for debts and incumbrances (such as mortgage money).

Where the *gross* value of the estate is under £500—duty can be paid on a fixed scale instead of on a percentage basis. For estates over £100 and under £300 a fixed duty of £1 10s. may be paid, and for estates over £300 and under £500 a fixed duty of £2 10s. may be paid. These duties are paid by adhesive estate duty stamps which can be purchased at Somerset House and at certain Head Post Offices. If the duties are paid within 12 months of the death no interest is charged. Where interest is, however, payable it is calculated from the date of death and is paid by postage stamps.

Where the value of an estate is just a few pounds over the maximum figure of a certain rate of duty

—so that the whole estate would normally be charged at a higher rate, the person paying the duty can, if preferred, pay duty at the lower rate and add to the duty to be paid the amount by which the estate exceeds the maximum figure of the lower rate. For example, where an estate exceeds £500 by £3 i.e., totals at £503 and by reason of this extra £3 of value, estate duty would be chargeable at 2 per cent on the whole £503; the person paying the duty can elect to pay 1 per cent on £500, i.e. £5 plus the £3 excess of value of estate =£8, instead of paying 2 per cent on £503 =£10 1s. 2d.

Where estate duty becomes payable on any property consisting of land or a business or any interest in land or a business passing on a death and subsequently within 5 years estate duty becomes payable on the same property on the death of the person to whom it passed on the first death, the estate duty on the second death is reduced. If the second death is within 1 year of the first—50 per cent reduction is made, within 2 years—40 per cent, and so by stages to 10 per cent reduction if the second death is within 5 years of the first death.

Subject to certain conditions, death duties can be paid by the transfer to the Commissioners of Inland Revenue of National War Bonds, War 3½ per cent Stock, and one or two other Government Stocks, these being taken not at their market price but their *issue* price with accrued interest from the last half-yearly payment.

It is not to be thought that by paying estate duty on the Inland Revenue affidavit, the executor has finished with estate duty. He may, and does,

sometimes find subsequently that he has forgotten to disclose to the Revenue some property of the deceased or has underestimated the value of some part of the estate, and that further estate duty is payable—or, alternatively, he may find he has over-valued some property and should get back estate duty on such over-valued property. In such cases he will fill up and send in a form of corrective affidavit, setting out the value of the property as originally given and the value as now corrected. This affidavit will be examined by the Inland Revenue authorities and the estate duty adjusted by a demand for the additional duty—or by a repayment of the overpaid duty.

When the estate has been got in and the debts and expenses all paid and the executor is ready to divide up the residue amongst the residuary legatees, he has in some cases to fill up a form of residuary account which sets out the estate as already disclosed in the Inland Revenue affidavit but showing what it actually realized and giving particulars of all expenses of winding up and what amounts actually remain available for distribution. This residuary account is sent to Somerset House for final assessment of duty, and on this occasion the final consideration of the duty payable is made. After this final adjustment there is no further demand for estate duty and the fund can be distributed among the ultimate beneficiaries.

In addition to estate duty there is another death duty called legacy duty. This arises under various statutes—commencing with the Legacy Duty Act, 1796.

Legacy duty is payable (with certain exceptions) on every gift by will of personal estate. For the

purpose of the duty, leasehold property is not included as personal estate, but as real estate.

The duty is not payable on specific legacies (i.e. legacies of specific articles like jewellery or furniture) the value of which is under £20, provided that all the benefits taken by the legatee are not together of the amount or value of £20. This exemption does not apply to pecuniary (i.e. cash) legacies and all pecuniary legacies—even those under £20 must pay legacy duty.

The duty is not payable where the whole personal estate of the deceased does not exceed £100. Neither is it payable where the property, real and personal, in respect of which estate duty is payable on the death of the deceased does not exceed £1,000 net value, and either the fixed estate duty of £1 10s. or £2 10s. has been paid or the ordinary estate duty has been paid on the Inland Revenue affidavit.

It should be borne in mind on paying legacy duty relating to small estates that where the net value of the property, real and personal, on which estate duty is payable exceeds £1,000, the amount of legacy and succession duty payable in respect of the property is not to exceed the amount by which the net value of the property as estimated for estate duty exceeds £1,000. In other words, if the estate is just a little over £1,000, it must not be charged with legacy or succession duty to a figure which would make it suffer more than if the estate was £999.

The person primarily liable for payment of legacy duty is the executor. If, however, a legatee has received his legacy in full without the legacy duty having been deducted, he is liable to pay the duty.

This does not, of course, relate to a legacy given "free of duty." The estate in such a case is always liable (through the executor) to pay the duty.

The rate of legacy duty depends upon the relationship of the legatee to the testator under whose will the property is derived. Thus, a husband or wife or child or other descendant or ancestor of the deceased has to pay 1 per cent legacy duty on the legacy coming to them (with the important exceptions given below), a brother or sister or the descendant of a brother or sister of deceased has to pay 5 per cent and all other persons, whether of more remote relationship or not related at all ("strangers in blood") to deceased have to pay 10 per cent.

There are very important exceptions in the case of the 1 per cent duties.

The first is, that no (1 per cent) legacy duty is to be paid where the estate does not exceed £15,000.

The next is, that no (1 per cent) legacy duty is to be paid where the amount or value of the legacy plus any other legacies derived by the same person from the deceased does not exceed £1,000 (whatever the principal value of the estate may be).

The third is, that where the legatee is the widow or a child under 21 of the deceased and the amount or value of the legacy, together with any other legacies derived from the same deceased does not exceed £2,000, the legacy duty (1 per cent) is not chargeable.

A curious provision is that a legatee whose husband or wife is a nearer relative to the testator than the legatee, comes in at the lower rate.

If a legatee is not a blood relation to deceased,

but only related by marriage, he or she is a "stranger in blood."

Legacy duty is payable as at the actual date the legacy is paid, and interest is chargeable upon non-payment of the duty calculated from the date the legacy was paid.

Succession duty is similar in some respects to legacy duty. In fact it is specially provided that *no* person paying legacy duty in respect of any property shall also be charged with succession duty in respect of the same gift.

The duty is payable (with some exceptions) upon every "succession" to property. A "succession" is a beneficial acquisition of real (including in this instance leaseholds) and personal property by any person upon the death of any person by reason of any disposition or devolution by law.

The person entitled to the succession is called a "successor," and the person from whom the interest of the successor is derived is called the "predecessor."

Succession duty is not paid—

1. Where the whole succession derived from the predecessor and passing upon any death to any person or persons does not amount to £100.

2. Where the property, real and personal, on which estate duty is payable on the death of deceased (exclusive of property settled otherwise than by deceased's will), does not exceed £1,000 net value and estate duty has been paid on the affidavit for Inland Revenue.

Where the value of an interest attracting succession duty is only just above the £1,000, the legacy duty must be only such as would leave £1,000 remaining after deducting the duty.

In the case of real property of which the successor is "competent to dispose," the duty is a charge on the property—in other cases the duty on real property is a first charge on the interest of the successor in such real property, and of all persons claiming in his right.

Besides the successor himself, every trustee or guardian is personally accountable for the duty.

Succession duty on real property can be paid by 8 equal half-yearly instalments if preferred.

The rates of succession duty are the same as for legacy duty and depend upon the relationship of the successor to the predecessor.

It is here desirable to consider the effect of claims for death duties generally upon purchasers of property. Special statutory provision is made for the protection of purchasers, mortgagees, etc., from subsisting claims for duty.

For example, a *bona fide* purchaser of land for valuable consideration, who has had no notice of any liability for estate duty on the property purchased by him is not accountable for such duty—neither is the duty a charge on the property. ("Purchaser" here includes a lessee or mortgagee.) But it must be remembered that this does not include a voluntary disposition. Natural love and affection, however great, is not a "valuable consideration."

A person will be considered to have had notice of the matter if it is within his knowledge—or the knowledge of his solicitor or agent—or would have come to their or his knowledge had proper inquiries been made. It would appear necessary for a prospective purchaser to call upon his vendor to furnish a certificate from the Estate Duty Office

exonerating the property from all duty—or else inquire himself there as to any outstanding claims in respect of the property.

As to land registered at the Land Registry—a registered disposition in favour of a purchaser in good faith for valuable consideration takes effect free from all claims for duty in connection with a death after 1925—notwithstanding that a notice of such claim appears on the register. The duty is a charge on the "proceeds of sale," but not on the land, i.e. the vendor or disposing party remains liable, but the purchaser is not liable or concerned in the matter.

In the case of non-registered land, a purchaser buying in good faith (or a mortgagee taking a charge) takes free from any charge for death duties unless the charge for duties is registered as a land charge.

CHAPTER XXII

AFFIDAVITS AND STATUTORY DECLARATIONS

SOME little knowledge of affidavits and statutory declarations must be possessed by all solicitors' clerks, whatever branch of law they follow.

It may be as well to try and explain the difference between an affidavit and a declaration. An affidavit is more usually required for use in the Courts and a statutory declaration for use in other matters—such as conveyancing.

An affidavit has to be sworn to (save that a person objecting to being sworn and stating as a ground for such objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief can make his solemn affirmation instead of taking an oath). A statutory declaration on the other hand is a simple declara tion by the declarant that the contents of the declaration are true.

No affidavit or declaration is evidence if there is any interlineation, alteration, or erasure unless the commissioner or other person before whom it is sworn has initialled the interlineation or alteration. In the case of an erasure, the words appearing to be written over the erasure should be re-written in the margin of the affidavit and signed by the commissioner for oaths. No alteration must be made in any affidavit after it has been sworn. If an alteration has to be made, the affidavit or declaration should be re-sworn or re-declared.

The form of affidavit should commence: "I

John Smith of 1 Blank Street Nowhere in the County of Wessex Builder and Contractor make oath and say as follows—." In the case of an affirmation, the words should be amended to, say, "do solemnly and sincerely affirm as follows—."

A statutory declaration should commence: "I John Smith of 1 Blank Street Nowhere in the County of Wessex Builder and Contractor do solemnly and sincerely declare as follows—" and should conclude: "And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835."

Every affidavit and declaration must be signed by the deponent or declarant. It need not necessarily correspond with the names appearing at the commencement of the affidavit, but can be the person's usual signature. For example, a deponent whose name is given in his affidavit as "Percy Augustus Smith Wilkinson" can sign "P. A. S. Wilkinson" or "Percy A. S. Wilkinson" if either of these is his usual signature.

The certificate of the commissioner for oaths is known as a "jurat." It is usually inserted with blanks for the date and place of swearing or declaring.

A usual form of jurat—as completed by a commissioner for oaths—would be—

"Sworn by the above named John Smith at 4 St. Swithin's Inn, Strand in the County of Middlesex this 1st day of April 1933. } John Smith

Before me,

A. Blunt,

A Commissioner for Oaths.

A jurat for an affirmation or declaration is the same, substituting "affirmed" or "declared" for the first word of the jurat.

The form of the jurat must be strictly adhered to. The absence of the date or the place of swearing or of the words "before me" vitiates the document.

Oaths, affirmations, and declarations, may be made before a commissioner of oaths or a justice of the peace. Commissioners for oaths are appointed from the ranks of solicitors and very many solicitors are qualified as commissioners to administer oaths.

It is not the practice of solicitors who are commissioners for oaths to swear their own clients to affidavits. It is the universal custom and etiquette to take the client to some other commissioner for oaths to be sworn. Apart from etiquette, it can be easily seen that this practice avoids all suspicion of collusion between the client and his legal adviser in the manufacture of evidence.

The ordinary form of oath is made by the deponent taking the New Testament in his right hand, raising the hand with the book above his head and saying: "I swear by Almighty God that this is my name and handwriting and that the contents of this my affidavit are true." If there are two or more deponents they should be sworn separately. There is an alternative form of oath called the Scotch form in which the deponent holds up his right hand above his head without holding the book. The habit of kissing the book has been almost entirely discontinued. Jewish deponents are sworn with the Old Testament (the five books of the Pentateuch) in place of the New Testament. Followers of other religions, such as Chinamen, Moslems, etc.,

can be sworn according to their own religious beliefs.

The words of an affirmation in place of an oath are verbally declared before the commissioner as follows: "I do solemnly sincerely and truly declare and affirm that the contents of this my affidavit are true." And the statement the declarant of a statutory declaration makes to the commissioner is: "I solemnly and sincerely declare that this is my name and handwriting and that the contents of this my declaration are true."

If a schedule is written after the jurat in an affidavit or declaration, the signature of the commissioner should be added at the end of the schedule. If a document referred to in the affidavit or declaration is declared to be annexed to the affidavit or declaration, it should be attached in some way to the affidavit or declaration and the following certificate added: "This is the (paper writing) annexed to the affidavit of John Smith sworn before me this 1st day of April 1933. *A. Blunt.* A Commissioner for Oaths."

If such document is "exhibited" to the affidavit, i.e. it is stated in the affidavit as being "now produced and shown to me," it is marked with a distinguishing sign as J.S.[1] or J.S.[2], and a certificate written on it: "This is the exhibit marked J.S.[2] referred to in the affidavit of John Smith sworn before me this 1st day of April 1933. *A. Blunt.* A Commissioner for Oaths."

CHAPTER XXIII

SETTLED LAND

THE subject of settled land is a knotty one for the solicitor's clerk, and in his first few years he will do little more than touch the fringe of it.

It is not intended within this book to do more than give some elementary information about settlements, leaving the reader to obtain more advanced instruction from other more erudite works.

First of all, what *is* a settlement? There is a definition given in sect. 1 of the Settled Land Act, 1925, which explains it, but the explanation is too complex to be repeated here.

To give an elementary explanation of a settlement will probably bring the criticism that it is insufficient in definition, but it must be attempted and the author gives it for what it is worth.

A settlement is any deed, will, or other instrument by which any land is held in trust for enjoyment by some person or persons for life or some limited period and then passes to some other person or persons. The person who has the enjoyment of the property for life is called a life tenant—and this kind of person will often be heard of by the solicitor's clerk.

A "tenant for life" is expressed by the Settled Land Act, 1925, to be "the person of full age who is for the time being beneficially entitled to possession of settled land for life."

A tenant for life has certain extensive powers regarding the settled land. Certain other limited owners (i.e. owners of land subject to limitations)

are deemed to have the powers of a tenant for life.

A tenant for life has extensive powers over the land comprised in the settlement. He can sell the whole or any part of it, or exchange it for other land. The sale must, however, be for the best price that can reasonably be obtained for it. It can be a sale by public auction or private contract and can be made subject to any stipulations respecting title or other matters. The tenant for life can fix the reserve biddings and may buy in at an auction.

A tenant for life can lease the settled property or any part thereof for any term not exceeding—

In case of a building lease, 999 years.

In case of a mining lease, 100 years.

In case of a forestry lease, 999 years.

In case of any other lease, 50 years.

The lease must be by deed and must reserve the best rent that can reasonably be obtained and it must contain a covenant by the lessee to pay the rent, and a proviso for re-entry on non-payment of the rent within a time therein specified not exceeding 30 days.

A tenant for life can, in addition to granting a lease, accept with or without consideration, a surrender of any lease of settled land. So also, a tenant for life can accept a lease of any land to be held or worked with the settled land. A tenant for life can give power to statutory authorities to lay pipes and convey water in, upon, or under, the settled land, and has power to grant in fee simple or on lease any part of the settled land for charitable purposes such as the erection of a hospital, public library, school house, etc.

A tenant for life can (*with the consent of the trustees of the settlement*) compromise, settle, or abandon any claim or dispute relating to the settled land or any part thereof—such as disputes as to boundaries, ownership of mines and minerals, easements, and restrictive covenants. He can (with the like consent), either with or without money consideration, release, waive, or modify, any restriction imposed on any other land for the benefit of the settled land.

The trustees of the settlement can sell, lease, mortgage or otherwise dispose of the settled land to the tenant for life, or advance capital money forming part of the settled funds on mortgage to him, or exchange with him other land for the settled land. In such cases, the trustees of the settlement have, in addition to their trust powers, the powers of a tenant for life in reference to negotiating and completing the transaction.

If any money is required for discharging an incumbrance (e.g. a mortgage), or for payment of any costs in connection therewith, the tenant for life can raise the money on the security of the settled land or any part thereof by a legal mortgage.

Any capital monies received on a sale of the settled land or any part thereof must be re-invested —if not required to be applied for any purpose authorised by statute—as set out in paragraph 73 of the Settled Land Act, 1925. Such capital moneys should be paid either to the trustees of the settlement or into Court at the option of the tenant for life and must be invested or applied by the trustees or under the direction of the Court.

There must be at least two trustees of a settlement, and capital money must not be paid to fewer

than two such trustees unless the trustee is a trust corporation.

The receipt in writing of the trustees (or where a sole trustee is a corporation, of that trustee) or by the personal representative of the last surviving or continuing trustee for any money or securities paid or transferred to such trustees or trustee or representative effectually discharges the payer or transferor therefrom and from being answerable for any loss or misapplication thereof.

Each person who is a trustee of a settlement is answerable only for what he actually receives—notwithstanding his having signed a receipt—and for his own acts and defaults. He is not answerable for any acts or defaults of any co-trustee, or any banker, broker or other person, or for the insufficiency or deficiency of any securities or for any loss whatever not happening through his own wilful default.

And the trustees generally are not liable for giving any consent or for taking, or not taking, any action or proceeding which they might have done—or for seeing to the investigation of the title to any land purchased out of capital moneys of the settlement, or for any conveyance purporting to convey the land, being a defective conveyance.

Personal representatives, trustees, or other persons, who have in good faith executed any assent or conveyance of the settled land, or a deed of discharge of trustees, are absolutely discharged from all liability and are entitled to be indemnified at the cost of the trust estate from all liabilities affecting the settled land. And trustees of settled land can reimburse themselves or pay or discharge out of the trust property all expenses. This is a

matter of considerable importance to settled land trustees.

It has been previously stated that a tenant for life can sell, lease, mortgage, and otherwise deal with the settled land. But it is important to remember that before a tenant for life exercises such powers, he must give notice of his intention to each of the trustees by posting registered letters containing such notice addressed to each trustee severally at his usual or last known place of abode in the United Kingdom, and a like notice similarly posted to the solicitor for the trustees (if known to the tenant for life). Each such letter must be posted not less than one month before the exercise by the tenant for life of his powers. The notice will not be valid if the number of trustees is less than two (save where the trustee is a trust corporation).

If, on receiving the notice, a trustee requests the tenant for life to furnish him with reasonable information as to the sales or leases, etc., effected or about to be effected, the tenant for life is bound to furnish it. A trustee has, however, no power to interfere with the exercise by the tenant for life of his statutory powers.

A trustee can (in writing) waive the month's notice or accept less than one month's notice. And a person who deals with a tenant for life in good faith is not concerned to enquire whether the tenant for life has given the necessary notice to the trustees.

If the tenant for life is an infant then the trustees of the settlement (unless expressly forbidden by the trust instrument) will enter into and take possession of the land on behalf of the infant. If they are forbidden to do so by the trust instrument,

special trustees must be appointed for this purpose by the Court.

The trustees will then have powers to deal with the settled land generally in any manner and way consistent with the proper management of the property.

Where does the purchaser come in? Suppose the tenant for life or trustees has or have committed some statutory breach or default? How does the purchaser know whether all requirements of the statute have been complied with? A purchaser need not trouble himself. If the purchaser has acted in good faith with the tenant for life he shall be conclusively taken to have given the best price that could reasonably be obtained for the land and to have complied with all his statutory obligations respecting such land. He is not bound to call for production of the trust instrument or for any information regarding it, and is entitled to assume that the person in whom the land purports to vest is the tenant for life or statutory owner and has all the powers of a tenant for life and that the statements in any vesting deed executed in accordance with the Settled Land Act, 1925, were and are correct.

Of course, the purchaser must in his own interest see that the land sold to him is comprised in the settlement or instrument, that the person in whom the settled land is vested is the right tenant for life and that the persons named as trustees in the vesting deed are the proper trustees of the settlement.

CHAPTER XXIV

BILLS OF SALE

WHERE money is lent on security of goods, the goods can be transferred to the lender until the money is repaid—in other words, the goods are "pawned," or the borrower retains the possession of the goods but transfers the ownership of them to the lender, so that if the money is repaid, the lender will re-transfer the property in the goods to the borrower, and if it is not repaid, the borrower shall give up the goods themselves to the lender who already possesses the title or property in them.

This latter instrument is called a bill of sale; it has to be made out in a special form and comply with the requirements of special Acts of Parliament. If it is not made out in accordance with the form in the Schedule to the Bills of Sale Act, 1882, it is not a valid instrument.

The Bills of Sale Acts are very difficult to construe, and the question of their construction has been the subject of many decided cases. So many bills of sale are really capable of being fraudulent and made with the intention of defeating the seizure of goods by a creditor.

The solicitor's clerk, however, is entitled to assume that any client who is asking how to prepare a bill of sale for execution is acting in a *bona fide* manner and without any intention to defraud.

It is as well—unless special terms are to be imported into the bill of sale (and this is dangerous, as the law requires the bill of sale to conform fairly strictly with the form in the Schedule to the 1882

Act)—to use one of the printed forms of bill of sale which can be purchased at the leading law stationers. The execution of the instrument by the borrower must be attested by two witnesses.

The bill of sale must be registered at the Central Office of the Supreme Court. On filing it an affidavit verifying its execution must be filed. The registration is recorded in an alphabetical register which can be inspected by any member of the public and the bill of sale itself inspected on payment of a search fee.

Where a bill of sale has been paid off, a memorandum of satisfaction may be filed and on a consent to such satisfaction being signed by the person entitled to payment of the amount secured verified by affidavit being lodged at the Central Office, the registration will be cancelled.

Where a bill of sale has been in force for 5 years it requires re-registration, failing which it becomes void. A fresh affidavit has to be filed that the bill of sale is still in force. A fresh entry is made in the alphabetical index register as of the date of re-registration.

CHAPTER XXV

CHANGE OF NAME

ANYBODY can change his name at any time and renounce his old name. There is no compulsion to retain such a Christian name as "Judas" or such a surname as "Buggins." But it is dangerous to alter one's name too frequently or without some documentary evidence associating one with the old name. It would be so awkward if old Uncle Ezekial Buggins, of Warra Warra, South Australia, should leave you all his fortune after you had assumed the name of Algernon De Vere Curzon. What proof would you have that you were really Judas Buggins?

It is because of this that a change of name is usually carried out by deed poll. The deed poll is merely a declaration to the world ("Know all men by these presents") that you have renounced your old name and have assumed and intend henceforth to be known by the new name. You sign it in your new name: "A. de Vere Curzon heretofore J. Buggins."

The signature to the deed poll should be witnessed preferably by a solicitor. It should be stamped with a 10s. deed stamp, and left at the Central Office of the Supreme Court for "enrolment" (being an ancient term for the entering of a deed on the Court rolls or records).

When the deed is lodged for enrolment, the solicitor's clerk should prepare a form of advertisement for insertion in the *London Gazette*, which has also to be signed by the client in both the new and the old name.

When this advertisement has appeared in the *London Gazette*, the solicitor's clerk should produce a copy of the *London Gazette* to the clerk of the enrolment office at the Central Office of the Supreme Court.

The deed poll will be returned to the solicitor marked with a certificate that it has been duly enrolled.

The deed poll and *London Gazette* should be carefully preserved by the client as they form clear evidence of the date of and change of name.

If the person changing his or her name is an alien, he or she must first obtain the consent of the Home Office. It is also necessary in such a case to register the new name as a "business name" under the Registration of Business Names Act, 1916—if the person intends to carry on any trade or profession.

CHAPTER XXVI

STOCKS AND SHARES

SOME elementary knowledge of the practice of buying, selling and transferring stocks and shares should be possessed by every solicitor's clerk.

Investments in corporations or companies are made in "stock," "bonds," "shares," or "debentures."

Stock is usually to be found in Government and Local Government loans, railways, gas, electric light, water and other public utility undertakings, and some of the larger commercial undertakings. Stock is usually distinguishable from other forms of investment, in that odd amounts of stock can be purchased, as for example, £103 5s. 7d. Local Loans, 3 per cent stock; or £421 Liverpool Corporation $4\frac{1}{2}$ per cent stock. This is, however, not invariable, as some stocks can only be acquired or held in fixed sums as £100, £50. or £25.

Another feature about stocks is that they are nearly always at a fixed rate of dividend or interest, such as $3\frac{1}{2}$ per cent or 5 per cent.

It will be obvious that the majority of stocks are really loans to the Government or municipal undertakings—as these are public bodies, and not profit making undertakings (even if municipal undertakings do happen to make a profit on, say, their electric light works or tramways). It is also to be noticed that most of these investments have a date or period of years attached to their title—as "India $3\frac{1}{2}$ per cent Stock, 1931," or "Ramsgate 3 per cent Stock, 1915–55."

These dates indicate that in that year or during that period of years the undertaking proposes to repay to the stockholder the amount lent to them, i.e. £100, or whatever the "nominal" or stated amount of stock actually is.

Stock is held in one of three different ways, i.e. "inscribed," "registered," or in "bearer bonds." "Inscribed stock" is stock, the names of the holders of which are "inscribed" in the share registers held at the Bank of England or other place responsible for the registration of the stock.

Whenever inscribed stock is transferred it is necessary for buyer and seller to attend in person at the stock transfer office of the undertaking to sign the transfer book.

In many instances it is necessary for the seller to be identified to prevent forgery.

It will be readily understood that this method of dealing with the transfer of stock has become so impracticable and unsatisfactory in modern times that it is usual nowadays to give the stockbroker a power of attorney to enable him to sign the transfer books. This is a special form of power of attorney, bespoken by the stockbroker from the Bank of England or other stock transfer office and limited to the actual duty devolving on the stockbroker.

Of course, the client can dispense with the power of attorney and attend in person to sign the transfer books, but it is very unusual.

Registered stocks—the more usual form of holding—are stocks, particulars of which are registered in the books of the undertaking, and a stock certificate issued to the registered holder of the stock. Such stocks are "transferable by deed" i.e. by an

executed transfer. In these cases it is not necessary to employ a stockbroker unless the stock is bought or sold on the Stock Exchange. In nearly every instance, the undertaking has its own form of transfer deed, copies of which can be obtained from the stock transfer office of the undertaking. In some rare instances the obliging servants of the undertaking will fill up the transfer—but otherwise the following points should be remembered: The name of the transferor should be given correctly and his name, address, and description or occupation should correspond with the particulars in the stock certificate; If there has been a change of address or description it should be set out—as: "John Smith formerly of 1 Lombard Street E.C.4 Mercantile Clerk and now of 84 Newcastle Park Newcastle on Tyne Shipowner"; The description of the stock should also be given with meticulous accuracy for reasons which need not be elaborated.

The transfer has to be stamped after execution (except in certain cases where transfers are free of duty—as British Government stocks—or where an arrangement has been come to between the undertaking and the Inland Revenue to compound the duty) and then lodged at the stock transfer office for registration. A fee for registration (2s. 6d. or 5s.) may be required, but British Government stocks and some others are registered free. A fresh certificate is issued to the new stock owner in the course of a week or two.

There are varied kinds of stocks such as "Ordinary Stock," "Preference Stock," "Deferred Stock," "Preferred Ordinary Stock," "Deferred Ordinary Stock," "Debenture Stock," etc., etc.

Some explanation of these terms will be found

further on in this chapter when the subject of shares is discussed.

"Bearer Stock"—usually "Bearer Bonds," is a form of stock popular with some undertakings—particularly some foreign Governments. It is not registered in any name, but the holder is deemed to be the proprietor. It is a risky but convenient form of holding. Bonds can be deposited with bankers for advances without difficulty or delay—they can be sold for cash without any formality and they do not require to be entered in any stock transfer books.

In some instances opportunity is given to the holders of bearer bonds to turn them into registered bonds by filling in the name, address and description of the owner and sending same to the stock office of the undertaking for registration. It is usual for the bonds to be returned to the owner, but with a stamp or other indication that the owner is registered as proprietor, and all subsequent dealings with the bonds must necessarily then be by transfer deed.

It may be asked how the dividends on bearer bonds are paid. It will be found that such bearer bonds are limited to a period of years and that there are attached to the bonds, small tickets or coupons dated for the respective quarter or half-year in which the dividend or interest becomes due. These are cut off by the holder as they become due and paid into the stockholder's bank, where they are treated as dividend warrants and collected.

A "share" is the usual form of investment in a company. Its ownership constitutes the shareholder a member of the company and entitled to share in the profits of the company. The shares

are of fixed amount—one pound shares, ten pound shares, five shilling shares, etc., etc. A company may have a nominal capital of, say, £10,000 divided into 10,000 shares of £1 each.

Some shares are given to the promoters of a company without payment for floating the company, or in payment for a business acquired by the company from the promoters—such as when a private business is turned into a limited company.

A company does not always issue all its nominal capital. Sometimes it cannot find sufficient people to furnish all the capital, but is able to procure sufficient capital for all necessary working. Sometimes it is deemed desirable to have a reserve of unissued capital, so that if the business expands it can be issued for further working capital if and when wanted.

Somewhat similarly, a company may decide not to "call up" its capital. Shares of, say, £1 may be issued to shareholders on their paying, say 10s. per share and rendering themselves liable to the company to pay up the remaining 10s. per share on demand or at some fixed date. By this means a company can work on less than its authorised capital—knowing that if further working money should be required, the shareholders can be called upon to pay up fully their shares. The shareholders' liability to pay up the balance of their share moneys is a common law liability and the company can enforce it against the shareholder by action.

The principal shares of a company are ordinary shares. These share in the profits of the company after all prior debts and engagements have been met. But in the course of joint stock company

progress, other forms of shares have arisen. For example, there are "Preferred or Preference Shares." These, as the name implies, are paid in preference to the ordinary shares. Dividends on preference shares are nearly always payable at a fixed rate, which does not depend on the prosperity or depression of the company. Thus, in a good year, the preference shareholder will only get his fixed dividend, but in a bad year the ordinary shareholder will get nothing until the preference shareholder has been paid his fixed dividend in full.

In some instances, the ordinary shares are divided into "Preferred Ordinary" and "Deferred Ordinary" shares. In these cases the owners of the deferred ordinary shares receive no dividend until the preferred ordinary shareholders have received a certain fixed dividend—after which, the profits are divided as provided by the company's articles of association.

Debentures or debenture stock are of a different character. The holders are not members of the undertaking, but mortgagees. A debenture is a mortgage—either of a specific property of a company—or of the whole undertaking of the company, including goodwill and uncalled capital.

A debenture holder thus has the right to seize the assets of the company in satisfaction of his claim.

Debentures have certain clauses defining the rights of their holders. If a majority decide to enforce their rights, they can appoint a receiver to sell the company's property and get in the proceeds on their behalf. If debenture holders, not possessing a majority, desire to enforce their rights they have to apply to the High Court for the appointment of a receiver.

Where a stockholder or shareholder dies, probate of his will or letters of administration of his estate should be registered with the company, or if the deceased was a joint holder, a death certificate produced. The share certificate should also be lodged for amendment.

A fee of 2s. 6d. is charged in many instances for such registration. If the identity of the deceased does not coincide with that of the shareholder, a declaration of identity may be required. Sometimes the company will require specimens of the signatures of the executors or administrators.

Dividends will, in the absence of special directions, always be sent to the first named person in the account. If other persons are to receive the dividends (i.e. a bank) special signed directions to that effect should be given.

It is desirable—if possible—to get the shares transferred out of the name of the deceased as soon as possible, as company secretaries dislike having accounts kept in the name of a deceased shareholder. In some instances the company registrar will ask the executors to transfer the shares into their own names if the articles of association of the company require the shares to be held in this way.

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CHAPTER XXVII

RESTRICTIVE COVENANTS

A FEW words about restrictive covenants—of a more or less practical nature—may be desirable in a contemplation of conveyancing.

For generations past, persons developing estates and selling land in plots have imposed stipulations as to the use of the land, binding the purchasers and their successors. These restrictions were for the benefit of other landowners on the same estate. Some of these related to how the land was to be developed, i.e. that houses of a not less value than, say, £400 were to be erected—that only private houses were to be erected, and so on. Some stipulated that fences were to be erected and maintained. Others were as to what was to happen before buildings were erected, i.e. no huts, sheds, or caravans were to be placed on the land, no gravel was to be dug except for building the houses to be thereafter erected on the land. Some stipulated as to the building line—no house to be erected more than 30 ft. from the front boundary. Others insisted that no house should be erected within 5 ft. of the boundary fence. And there were some of even more meddlesome character.

These stipulations, however old, are still nominally in force, but few solicitors concern themselves to see whether a house built in 1850 was of the net value imposed by some deed of 1838.

With the post-war development of suburban estates, a fresh outpouring of these stipulations has taken place, and purchasers are bound to have

regard to them. But it must be perfectly obvious that as time goes on, the character of a neighbourhood must change and the restrictions become quite obsolete. One has only to observe the numberless private houses being converted into shops to see that a restriction against land being used for any other but private houses must restrict the normal development of a district.

This was at length appreciated by our lawgivers, and sect. 84 of the Law of Property Act, 1925, empowered the official arbitrators (originally appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919) to modify such restrictions in individual cases where such restrictions impeded the reasonable use of the land.

The person applying to be relieved has to make a formal application to the official arbitrator, setting out the grounds of the application, the application has to be advertised in the local newspaper, and if any objection is received, the arbitrator has to hold an enquiry—for which the applicant desiring removal of the restriction has usually to pay.

The application for removal of restrictions is not very often made—partly on the ground of trouble and expense, but if it costs £50, and the value of the land increases £100 in value because of the withdrawal of the restriction—it is probably worth while. It must be remembered, on the other hand, that if a person ignores a restrictive covenant—it is only in a substantial case that his neighbours will apply to the Court to restrain him from his act—and that if any such proceedings are taken against him, he can apply to the Court to stay the proceedings while he approaches the official arbitrator to discharge the restriction.

It would appear wise in cases where a sale is dependent on getting a restriction removed, that the landowner should, if possible, get the matter "clinched" by a contract—a conditional contract—conditioned that the vendor will get the restriction removed.

CHAPTER XXVIII

MINING PRACTICE

WHILE the aspect of conveyancing practice shortly discussed in the present chapter will only in general affect the solicitor's clerk employed in an industrial or mining area, a short statement in connection with mining practice generally has been considered worthy of inclusion in this volume. Any clerk employed in an agricultural area may by a change of employment or residence suddenly find himself in an industrial area, and then in conveyancing matters for the first time in his career be confronted with an exception of mines and minerals, or a mining lease. For the precise meaning of "mines and minerals," the reader must be referred to more elaborate treatises.

As every clerk will know, the term "land" as used in conveyancing includes not only the surface of the earth but everything under or above it, e.g. mines, woods, and houses. In the mining areas the owners of land, and particularly the owners of large estates, have for very many years "excepted" the mines from any sales, and in numerous cases, therefore, the surface lands and the mines are in quite different ownerships. The exception itself may take the form of an exception of *all* mines and minerals or only of those lying below (or down to) a stated depth, and in some cases extends to gas and gaseous substances.

Colliery owners (i.e. the mine workers) have, therefore, to acquire these excepted mines either by purchase or lease. In small cases they are

usually acquired by purchase, when the matter is dealt with by contract of sale, investigation of title, and conveyance in the ordinary way.

By way of divergence it may be stated here that personal representatives and trustees may now sell the surface of land apart from the minerals, or *vice versa*, without any special power. Prior to 1926 trustees had to obtain the leave of the court, but even before 1926 executors or administrators could sell any mines and minerals apart from the surface without any special power. A beneficial owner can, of course, divide lands and mines in any way he chooses. As regards mortgagees, if the mortgage was executed *after* 1911 they may, in the exercise of their statutory power of sale, sell the mortgaged property or all or any mines and minerals apart from the surface, but if the mortgage was created *before* 1912 the power of sale does not enable them to sell the surface and mines apart, but the court may authorise them to do so. A tenant for life may sell land with an exception of mines and minerals, and, as stated elsewhere, may grant mining leases.

Where the mines are excepted, it is important to remember that the vendor (i.e. the person retaining the ownership of the mines) has no right in working the excepted minerals to let down the surface (i.e. cause subsidence) unless the conveyance either in express terms or by necessary implication authorises him to do so. Even the power taken in the conveyance of "working, getting and carrying away" the mines is not sufficient to take away the surface owner's right to have his surface undisturbed. It is, however, almost impossible (unless they are at great depth)

to work mines without causing some disturbance of the surface and consequent damage to buildings, and the vendor reserves to himself power in "working and getting" the minerals to let down the surface, either with or without a liability to compensate for damage caused. The liability to compensate may be restricted to existing buildings (i.e. existing at the date of the conveyance) or to buildings erected in substitution therefor, but *not* to any extensions thereof, or may take a variety of other forms which cannot be discussed here. To protect himself the vendor will, in his turn, sell (or lease) his mines to the mine workers subject to these compensation provisions and thus pass on his liabilities.

Conveyances of mines are generally executed in duplicate—the vendor retaining the duplicate—and in addition the solicitor to the purchaser usually insists on a memorandum of the conveyance of the mines being endorsed on the last conveyance in the possession of the vendor. This acts as a double precaution against the already sold mines being erroneously included in any subsequent dealings with the surface lands.

The solicitor's clerk familiar with conveyancing generally should very soon adapt himself to the altered conditions in a mining area.

As regards mining leases, the position is somewhat more complicated. Mining lessors are usually the owners of large estates or the tenants for life of settled estates. A mining lease is a formidable document, as a reference to any of the recognized books of precedents will show. They may be two hundred folios in length and have several large plans attached. They are usually printed.

The provisions of a mining lease are very elaborate and (*inter alia*) make provision for payment of rent and royalties; for vigorous working by the lessees; the keeping of plans; rendering of royalty accounts to the lessor; power to occupy surface lands belonging to the lessor; a "shorts" clause and many other matters, but all these clauses cannot be discussed in detail here. It will, however, be convenient to consider a few of these provisions under sub-headings.

Minimum Rent

This is the rent which the lessees are bound to pay to the lessor annually whether they work the mines or not. Where the lease is also of surface lands on which the mining works (e.g. the colliery shaft and buildings) are erected, the minimum rent may or may not include a specified area of surface lands.

Surface Rents

These are rents which the lessees have to pay for surface lands occupied by them for the purposes of their mining operations (e.g. dumps and spoil heaps). The lessees generally are under a liability to restore these surface lands to their original condition at the expiration of the lease, or alternatively to pay compensation therefor. Restoration is, however, in almost every case impossible, as one has only to look at the many spoil heaps existing in a mining area to realize what an enormous cost would be entailed in any attempt at restoration. To pay compensation is therefore the cheaper process. Many of these spoil heaps are, however, quite valuable as they provide good

material for road-making. The material for many of our existing tar-macadam roads has in fact been extracted from these spoil heaps.

Royalties

These are payments which the lessees have to pay for all mines actually worked. The amounts vary according to the value of the particular seam and are expressed to be payable per "yard acre" or per "foot acre," but we need not concern ourselves with the methods of measurement or calculation. As regards ironstone the rate is usually "per ton calcined"—calcination being one of the processes of refinement. Royalties are, however, not usually payable until minerals, calculated at the royalty rates, to the amount of the minimum rent have been worked, but when mines in excess of the minimum rent have been worked then the excess royalties become payable. One may therefore wonder what happens when in any year the royalties exceed the amount of the minimum rent, but in a subsequent year do not reach that figure. This position is governed by the "shorts" clause, which provides that the lessees are not entitled to recoup any short workings out of the overworkings of any subsequent year. If, therefore, the workings in any year exceed the amount of the minimum rent, the lessor will receive more than the minimum rent, but if the workings do not reach the amount of the minimum rent, the lessor will still receive the minimum rent.

Plans

The provisions as to the keeping of plans by the lessees are quite distinct from the statutory

obligations of lessees under the Coal Mines Acts, and the rendering of royalty accounts is of course necessary to enable the lessor to check the amount payable to him.

From the above the solicitor's clerk will no doubt wonder as to how much of a mining lease he need concern himself with if he happens to come into contact with one in a conveyancing matter. In short the answer is: only the compensation provisions and the grant of, or power to acquire or occupy, surface lands. The vendor will no doubt sell subject to the lease, but the purchaser's solicitor if the land the subject of the sale is liable to be taken by the mining lessees for surface operations, must naturally explain the position to the purchaser before the contract is signed. If possible therefore the lease should always be inspected before the contract is approved.

Another aspect of mining practice arises on the question of barriers. Mining lessors often enter into mutual agreements whereby they agree to leave certain areas of mines unworked as a protection against fire and water. Again, where there is a central pumping station, mutual agreements are entered into for the maintenance of the station.

Also coming within the category of mining may be considered leases of brick works and quarries, although the tendency of brick and quarry workers is where possible to purchase their working areas. Where leases are granted, they are again very elaborate and complicated, and unfortunately cannot be dealt with in this volume.

APPENDIX

The Statutory Form of Conditions of Sale, 1925 Dated 7th August, 1925

I, George Viscount Cave, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 46 of the Law of Property Act, 1925, hereby prescribe and publish the form following and direct that it shall be available for any contract for the sale of land made on or after the 1st day of January, 1926.

Statutory Form of Conditions of Sale

Note. These conditions will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation to the contrary expressed in the correspondence.

They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this and any other purpose be cited as the Statutory Form of Conditions of Sale, 1926.

1. *Date Fixed for Completion.* The date for completion shall, unless otherwise agreed, be the 1st day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas Day, Good Friday, or Bank Holiday, the next following working day.

2. *Place for Completion.* Completion shall take place at the office of the Vendor's Solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

3. *Possession and Apportionment of Outgoings.* (1) The purchaser paying his purchase money, or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion.

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended

to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

4. *Interest on Purchase Money.* (1) If from any cause whatever (save as hereinafter mentioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent per annum, from the date fixed for completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(*a*) at his own risk, deposit the purchase money, or where a deposit is paid, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(*b*) give notice in writing forthwith of such deposit to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(*a*) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925, or to convey; or

(*b*) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as

if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which subclause (2) of this clause applies.

5. *Delivery of Abstract.* (1) The vendor shall deliver to the purchaser or his solicitor—

(*a*) an abstract of the title to the property sold, or

(*b*) in the case of land registered with an absolute or good leasehold title, the particulars and information which ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable of taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply.

6. *Requisitions.* (1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(*a*) the title or evidence of title,

(*b*) the abstract or the said particulars and information,

(*c*) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered satisfactory.

7. *Power to Rescind.* (1) If the purchaser shall take or make any objection or requisition, which the vendor is unable

to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser of any right conferred on him by section forty-two of the Law of Property Act, 1925.

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

8. *Preparation of Conveyance.* (1) The conveyance or instrument of transfer to the purchaser shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any), shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

9. *Power for Vendor to Resell after Notice.* (1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(*a*) the deposit money, if any, shall, unless the court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees;

(*b*) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

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